TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 170. 181.

J. C. ANDERSON AND OTHERS, APPELLANTS,

vs.

THE UNITED STATES.

ON A CERTIFICATE FROM AND WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

CERTIFICATE FILED OCTOBER 12, 1897.
CERTIORARI AND RETURN FILED NOVEMBER 12, 1897.

(16,692.)

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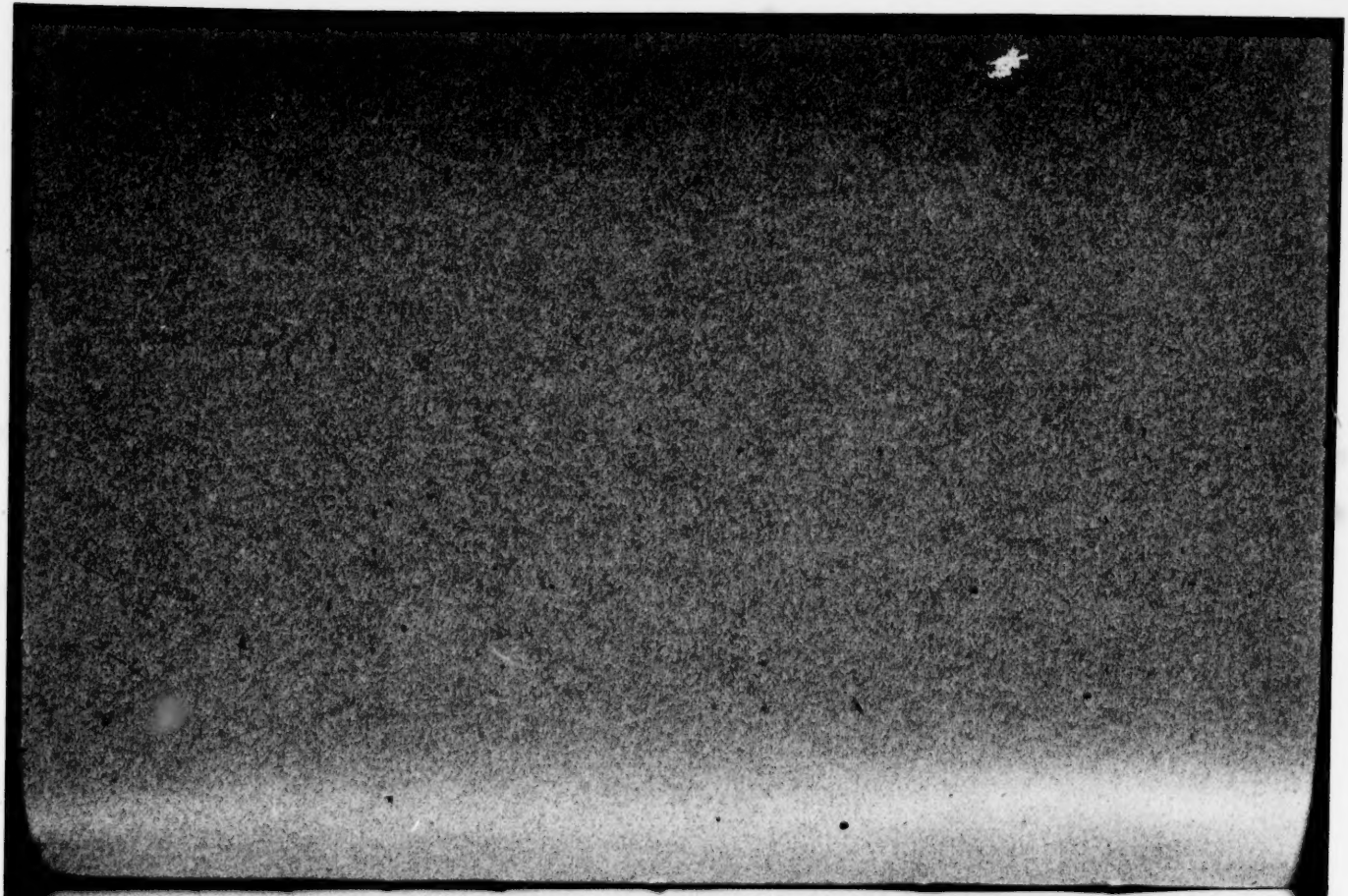

(16,692.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 479.

J. C. ANDERSON AND OTHERS, APPELLANTS,

vs.

THE UNITED STATES.

ON A CERTIFICATE FROM AND WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 26, 1897.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which J. C. Anderson *et al.* are appellants and The United States is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the western district of Missouri, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals
2 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA, *Eighth Circuit,* } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In witness whereof I hereto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at office in the city of St. Louis, Missouri, this ninth day of November, A. D. 1897.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

[Endorsed:] Supreme Court of the United States, October term, 1897. No. 479. J. C. Anderson *et al. vs.* The United States. Writ of certiorari. Filed Oct. 29, 1897. John D. Jordan, clerk.

3 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1897, of said court, begun and held at the United States court-house, in the city

of St. Paul, Minnesota, before the Honorable David J. Brewer, circuit justice, and Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the twenty-third day of August, A. D. 1897, a transcript of record was filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, pursuant to an appeal allowed by the circuit court of the United States for the western district of Missouri, in the case of J. C. Anderson and others, appellants, *vs.* The United States of America, appellee; which said transcript is in the words and figures following, to wit:

To United States—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the Western Division of the Western District of Missouri, wherein J. C. Anderson, E. S. Aiken, J. H. Aiken, J. V. Aiken, E. F. Anderson, W. M. Anderson, William B. Archer, John Brown, O. Bjorkman, W. B. Barnes, A. M. Byram, H. A. Benson, A. A. Bidwell, Alex. Bradford, A. H. Bayless, R. A. Brown, Ed. Brown, J. P. Butterfield, S. K. Chorn, W. M. Cole, F. B. Chapeze, J. F. Chapin, James D. Cox, H. A. Cubbison, M. Cavey, George W. Craycraft, E. S. Downs, J. R. Dillingham, M. Donegan, C. M. Davis, K. Donohus, F. J. Donohue, A. Deichman, W. H. Embry, Charles W. Embry, A. N. Egan, H. S. Farrar, L. Frank, S. B. Floyd, Warner Floyd, H. L. Fetters, L. Frew, Charles Frew, William Fox, Henry Frank, J. W. Farrar, L. D. Graves, P. J. Gosnell, Jacob Gouch, L. F. Green, Philo S. Harris, W. P. Harris, P. H. Harris, A. Haggarty, Walter M. Hair, Balboa Henry, E. Harris, J. P. Holloway, J. R. Hawpe, J. M. Hail, Josiah Hale, George W. Irwin, Henry Jones, John T. Jett, I. M. Johnston, W. E. Johnston, H. M. Johnston, A. J. Judy, W. H. Jett, B. C. Jett, A. Judd, P. Kieney, John Keating, F. T. Kearns, T. S. Kennedy, J. W. Kellogg, George H. Liddle, John S. Lindermann, J. N. Leach, John Lorimer, D. C. Lorimer, W. C. Lorimer, L. Levey, R. McMurtrie, George Macdonald, George J. Macdonald, John P. Miller, George W. Miller, Jerry McCarthy, Mike Miller, Otto C. Mason, R. L. Mitchell, B. J. Means, C. G. Manion, R. J. Monroe, P. Marx, J. W. Northern, L. Nathan, F. L. Orvis, C. Orear, William Priestman, A. R. Perkins, D. A. Painter, Charles Park, W. S. Park, Charles Philbrick, M. C. Ryland, J. S. Ryland, J. H. Rymell, Peter Stewart, V. A. Stephens, J. H. Spurlock, E. J. Sweeney,

2 C. C. Sparks, C. Settle, M. C. Spence, John Shobe, Andy Shobe, W. A. Sanders, E. Storm, C. E. Seeley, C. W. Seeley, A. Swansen, W. E. Tower, W. C. Trower, James Troutman, James S. Thompson, J. R. Wilhite, Arthur Wilhite, John Wilhite, W. J. Woolrey, A. M. Winslow, Jerry Wolf, Lester Wolf, A. Wolf, David Welsh, John L. Wilson, Henry Weill, Samuel Weill, J. A. Winstead, C. E. Wainscott, R. P. Yocum, W. H. Yency, are appellants and you are respondents, to show

cause, if any there be, why the order and decree of temporary injunction rendered against the said appellants as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John F. Philips, Judge of the District Court of the United States for the Western Division of the Western District of Missouri, this 2d day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

JNO. F. PHILIPS, Judge.

United States of America,

Western Division of Western District of Missouri—ss.

I hereby acknowledge due service of the within citation this fourth day [—] August A. D. 1897.

JOHN R. WALKER,
United States Attorney.

2196. Citation. Filed Aug. 4, 1897. Adelaide Utter, Clerk.

3 United States of America—set.

Be it remembered that heretofore, to wit, on the 7th day of June, A. D. 1897, there was filed in the office of the clerk of the Circuit Court of the United States, for the Western Division of the Western District of Missouri, a bill in equity in a cause wherein the United States of America is complainant and J. C. Anderson and others are respondents.

Said bill is in words and figures as follows, to wit:

In the Circuit Court of the United States, in and for the Western Division of the Western District of Missouri.

The United States of America, Plaintiff,

vs.

J. C. Anderson, E. S. Aiken, J. H. Aiken, J. V. Aiken, E. F. Anderson, W. M. Anderson, William B. Archer, John Brown, O. Bjorkman, W. B. Barnes, A. M. Byram, H. A. Benson, A. A. Bidwell, Alex Bradford, A. H. Bayless, R. A. Brown, Ed. Brown, J. P. Butterfield, S. K. Chorn, W. M. Cole, F. B. Chapeze, J. F. Chapin, James D. Cox, H. A. Cubbison, M. Cavey, George W. Craycraft, E. S. Downs, J. R. Dillingham, M. Donegan, C. M. Davis, K. Donohue, F. J. Donohue, A. Deichman, W. H. Embry, Charles W. Embry, A. N. Egan, S. H. Farrer, L. Frank, S. B. Floyd, Warner Floyd, H. L. Fetters, L. Frew, Charles Frew, William Fox, Henry Frank, J. W. Farrar, L. D. Graves, P. J. Gosnell, Jacob Gouch, L. F. Green, Philo S. Harris, W. P. Harris, P. H. Harris, A.

4 Haggarty, Walter M. Hair, Balboa Henry, E. Harris, J. P. Holliway, J. R. Hawpe, J. M. Hail, Josiah Hale, George W. Irwin, Henry Jones, John T. Jett, I. M. Johnston, W. E. Johnston, H. M. Johnston, A. J. Judy, H. W. Jett, B. C. Jett, A. Judd, P. Kieney, John Keating, F. T. Kearns, T. S. Kennedy, J. W. Kellogg, George H. Liddle, John S. Lindermann, J. N. Leach, John Lorimer, D. C. Lorimer, W. C. Lorimer, L. Levey, R. McMurtrie, George Macdonald, George J. Macdonald, John P. Miller, George W. Miller, Jerry McCarthy, Mike Miller, Otto C. Mason, R. L. Mitchell, B. J. Means, C. G. Manion, R. J. Monroe, P. Marx, J. W. Northern, L. Nathan, F. L. Orvis, C. Orear, William Priestman, A. R. Perkins, D. A. Painter, Charles Park, W. S. Park, Charles Philbrick, M. C. Ryland, J. S. Ryland, J. H. Rymell, Peter Stewart, V. A. Stephens, J. H. Spurlock, E. J. Sweeney, C. C. Sparks, C. Settle, M. C. Spence, John Shobe, Andy Shobe, W. A. Sanders, E. Storm, C. E. Seeley, C. W. Seeley, A. Swanson, W. E. Tower, W. C. Trower, James Troutman, James S. Thompson, J. R. Wilhite, Arthur Wilhite, John Wilhite, W. J. Woolrey, A. M. Winslow, Jerry Wolf, Lester Wolf, A. Wolf, David Welsh, John L. Wilson, Henry Weill, Samuel Weill, J. A. Winstead, C. E. Wainscott, Thomas Welch, R. P. Yocum, W. H. Yancy, Defendants.

5 To the Honorable Judges of the Circuit Court of the United States:

Your orator, the United States of America, by John R. Walker, United States Attorney for the Western District of Missouri, who acts in this behalf under the direction of the Honorable Joseph McKenna, the Attorney General of the United States, brings this, its bill of complaint against J. C. Anderson, E. S. Aiken, J. H. Aiken, J. V. Aiken, E. F. Anderson, W. M. Anderson, William B. Archer, John Brown, O. Bjorkman, W. B. Barnes, A. M. Byram, H. A. Benson, A. A. Bidwell, Alex. Bradford, A. H. Bayless, R. A. Brown, Ed. Brown, J. P. Butterfield, S. K. Chorn, W. M. Cole, F. B. Chapeze, J. F. Chapin, James D. Cox, H. A. Cubbison, M. Cavey, George W. Craycraft, E. S. Downs, J. R. Dillingham, M. Donegan, C. M. Davis, K. Donohue, F. J. Donohue, A. Deichman, W. H. Embry, Charles W. Embry, A. N. Egan, S. H. Farrar, L. Frank, S. B. Floyd, Warner Floyd, H. L. Fetters, L. Frew, Charles Frew, William Fox, Henry Frank, J. W. Farrar, L. D. Graves, P. J. Gosnell, Jacob Gouch, L. F. Green, Philo S. Harris, W. P. Harris, P. H. Harris, A. Haggarty, Walter M. Hair, Balboa Henry, E. Harris, J. P. Holliway, J. J. R. Hawpe, J. M. Hail, Josiah Hale, George W. Irwin, Henry Jones, John

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6 C. C. Sparks, C. Settle, M. C. Spence, John Shobe, Andy Shobe, W. A. Sanders, E. Storm, C. E. Seeley, C. W. Seeley, A. Swanson, W. E. Tower, W. C. Trower, James Troutman, James S. Thompson, J. R. Wilhite, Arthur Wilhite, John Wilhite, W. J. Woolrey, A. M. Winslow, Jerry Wolf, Lester Wolf, A. Wolf, David Welsh, John L. Wilson, Henry Weill, Samuel Weill, J. A. Winstead, C. E. Wainscott, Thomas Welch, R. P. Yocum and W. H. Yancey, each of whom are citizens and residents of the Western Division of the Western District of Missouri, and thereupon your orator complains and gives the Court to understand and to be informed that each of the persons above named are members of a voluntary unincorporated association, known and designated as "The Traders' Live Stock Exchange;" that the government of the said Traders' Live Stock Exchange is vested in a board of eight directors all of whom are members of said Exchange; that in addition to said board of directors the officers of said Exchange are: President, vice-president, secretary and treasurer; that the business of said Traders' Live Stock Exchange is carried on and conducted by said board of directors and officers with the consent, knowledge and approbation of the defendants as members of said Traders' Live Stock Exchange at the Kansas City stock yards, situated in the city of Kansas City in the State of Missouri, and in the city of Kansas City in the State of Kansas and in a building owned by the Kansas City Stock Yards Company, which said building is so located that one-half thereof is situated in the State of Missouri, and the other half thereof in the State of Kansas; that of the above named defendants, about one-half thereof have offices and transact business in said stock yards and in said building within the State of Kansas, and the other one-half of said defendants have offices and transact business at said building and stock yards in the State of Missouri.

7 And your orator further shows to the Court that the Kansas City Stock Yards Company is a corporation owning, controlling, operating and managing the Kansas City

Stock Yards; that said stock yards are located in Jackson County, Missouri, and in Wyandotte County, Kansas, being located upon both sides of the State line between the States of Kansas and Missouri, and said stock yards consist of the yards, pens, chutes, railway tracks, sheds, scales, buildings and other means and appliances for receiving, yarding, feeding, selling, purchasing and shipping cattle, hogs and other live stock; that the Board of Directors and officers of said Live Stock Exchange, each of whom are defendants herein, transact its business partially in the State of Missouri and partially in the State of Kansas.

And your orator further shows to the court that the Kansas City Stock Yards is a public market and next to the market at Chicago in the State of Illinois, is the largest live stock market in the world; that a vast number of cattle, hogs and other live stock is received annually at the said Kansas City Stock Yards; that the said live stock are shipped from the states of Kansas, Nebraska, Colorado, Texas, Missouri, Iowa and Arkansas, and the Territories of Oklahoma, Arizona and New Mexico; that large numbers of live stock received at the Kansas City Stock Yards as aforesaid is for sale upon said market, and many head of said live stock are sold upon the market at the Kansas City Stock Yards as aforesaid, to buyers who reside in other states and territories, and who re-ship said stock to said states and territories and that a vast number of live stock which are received at the said Kansas City Stock Yards are shipped from the said States of Kansas, Nebraska, Colorado, Texas, Missouri, Iowa, Arkansas and the said Territories of Oklahoma, Arizona and New Mexico, to Chicago and other markets in the east; that said stock are shipped to said markets under contracts whereby the shipper is permitted
8 to unload said stock at the Kansas City Stock Yards, rest, water and feed the same and is accorded the privilege of selling said stock upon the Kansas City market if prices prevailing at the time justify such sale; and that many head of such stock so shipped as aforesaid, are thus sold upon the Kansas City market as aforesaid; that a large proportion of the live stock, consisting of cattle, hogs and sheep are sold to various packing houses situated in Kansas City, Missouri and in Kansas City, Kansas, and large numbers are sold for shipments to various other markets, particularly for shipment to Chicago, St. Louis and New York markets, and large numbers are sold for export to London and other European markets; that the cattle, hogs, and sheep so received annually at the Kansas City Stock Yards as aforesaid, are and constitute a part of interstate commerce between the various states and territories and especially between the States of Kansas, Ne-

braska, Colorado, Texas, Missouri, Iowa and Arkansas, and the Territories of Arizona, Oklahoma and New Mexico.

And your orator further shows to the Court that your orator has employed and stationed at the Kansas City Stock Yards its inspectors, who inspect the live stock received at said stock yards as aforesaid.

And your orator further shows to the Court that in the course of business at the said Kansas City Stock Yards, in the buying, selling, handling and re-shipment of cattle, the said cattle are moved and shifted from that part of said stock yards situated in the State of Kansas, to that part of the said stock yards located in the State of Missouri, and from that part of the said stock yards situated in the State of Missouri to that part of said stock yards located in the State of Kansas, according to the convenience of the said Kansas City Stock Yards Company; that in the sale and re-shipment of stock from said stock yards, a portion are sold and shipped from the State of Kansas, and a portion from the State of Missouri, the loading pens and chutes of said Kansas City Stock Yards Com-
9 pany being situated in both said states and contiguous to each other as aforesaid; that said Kansas City Stock Yards afford to owners, shippers and dealers in live stock the only available means at that place for handling, selling and re-shipping live stock, and the only available market and place for those purposes within a distance of two hundred miles to the north, south and east of Kansas City, and for more than one thousand miles to the west thereof; and that by reason thereof, said Kansas City Stock Yards is the only available public market for the purchase and sale of live stock for a large extent of territory, constituting the states and territories of the United States hereinbefore named, and the only available means for the exchange of interstate traffic in said live stock between the states and territories aforesaid; that by reason of the business at said stock yards being transacted on both sides of the state line between Kansas and Missouri, and by reason of the fact that the live stock received, bought, sold, and re-shipped at said stock yards are transported from one state to another state of the United States and in the course of being so received, sold, delivered and re-shipped at the said stock yards are at times in the State of Kansas and at other times in the State of Missouri, the said business becomes and is interstate in its character, and the business and traffic in said live stock is interstate commerce, and that the business can only be regulated and controlled by Federal legislation.

And your orator further shows to the Court that these defendants and each of them, and divers other persons were prior to the month of March, 1897, engaged as speculators upon

and at the Kansas City Stock Yards as aforesaid; that is, in buying upon the market, re-selling upon the same market, and reshipping to other markets in other states the cattle so received at the Kansas City Stock Yards as aforesaid; that it is and for years past has been, the daily custom and practice of these defendants and their associates together with divers other persons in the conduct of their business to purchase and sell live stock in the State of Missouri, which is at the time located at said stock yards in pens in the State of Kansas, and to purchase and sell live stock in the State of Kansas which is at the time located at stock yards in pens in the State of Missouri, and deliveries of said live stock are made on such purchases and sales from the State of Kansas to purchasers in the State of Missouri, and deliveries of said live stock are also daily made on such purchases and sales from the State of Missouri to purchasers in the State of Kansas.

And your orator further shows to the Court that all the live stock shipped to and received at the Kansas City Stock Yards as aforesaid, is consigned to commission merchants at said stock yards, which said commission firms take charge of said stock when it is received at said stock yards as aforesaid; that they sell said stock to the packing houses located at Kansas City, Missouri, and Kansas City in the State of Kansas, and they sell large numbers of said cattle to these defendants and to other persons who re-sell and re-ship the same.

And your orator further shows to the Court that these defendants, the said J. C. Anderson, E. S. Aiken, J. H. Aiken, J. V. Aiken, E. F. Anderson, W. M. Anderson, William B. Archer, John Brown, O. Bjorkman, W. B. Barnes, A. M. Byram, H. A. Benson, A. A. Bidwell, Alex Bradford, A. H. Bayless, R. A. Brown, Ed. Brown, J. P. Butterfield, S. K. Chorn, W. M. Cole, F. B. Chapeze, J. F. Chapin, James D. Cox, H. A. Cubbison, M. Cavey, George W. Craycraft, E. S. Downs, J. R. Dillingham, M. Donegan, C. M. Davis, K. Donohue, F. J. Donohue, A. Diechman, W. H. Embry, Charles W. Embry, A. N. Egan, S. H. Farrar, L. Frank, S. B. Floyd, Warner Floyd, H. L. Fetters, L. Frew, Charles Frew, William Fox, Henry Frank, J. W. Farrar, L. D. Graves, P. J. Gosnell, Jacob Gouch, L. F. Green, Philo S. Harris, W. P. Harris, P. H. Harris, A. Haggarty, Walter M. Hair, Balboa Henry, E. Harris, J. P. Holliway, J. R. Hawpe, J. M. Hail, Josiah Hale, George W. Irwin, Henry Jones, John T. Jett, I. M. Johnston, W. E. Johnston, H. M. Johnston, A. J. Judy, H. W. Jett, B. C. Jett, A. Judd, P. Kieney, John Keating, F. T. Kearns, T. S. Kennedy, J. W. Kellog, George H. Liddle, John S. Lindermann, J. N. Leach, John Lorimer, D. C. Lorimer, W. C. Lorimer, L. Levy, R. McMurtrie,

George Macdonald, George J. Macdonald, John P. Miller, George W. Miller, Jerry McCarthy, Mike Miller, Otto C. Mason, R. L. Mitchell, B. J. Means, C. G. Manion, R. J. Monroe, P. Marx, J. W. Northern, L. Nathan, F. L. Orvis, C. Orear, William Priestman, A. R. Perkins, D. A. Painter, Charles Park, W. S. Park, Charles Philbrick, M. C. Ryland, J. S. Ryland, J. H. Rymell, Peter Stewart, V. A. Stephens, J. H. Spurlock, E. J. Sweeney, C. C. Sparks, C. Settle, M. C. Spence, John Shobe, Andy Shobe, W. A. Sanders, E. Storm, C. E. Seeley, C. W. Seeley, A. Swanson, W. E. Tower, W. C. Trower, James Troutman, James S. Thompson, J. R. Wilhite, Arthur Wilhite, John Wilhite, W. J. Woolrey, A. M. Winslow, Jerry Wolf, Lester Wolf, A. Wolf, David Welsh, John L. Wilson, Henry Weill, Samuel Weill, J. A. Winstead, C. E. Wainscott, Thomas Welch, R. P. Yocum and W. H. Yancey have unlawfully entered into a contract, combination and conspiracy in restraint of trade and commerce among the several states and with foreign nations in this, to wit: that they have unlawfully agreed, contracted, combined and conspired to prevent all other persons than members of the Traders' Live Stock Exchange as aforesaid, from buying and selling cattle upon the Kansas City market at the Kansas City Stock Yards as aforesaid; that the commission firm, person, partnership or corporation to whom said cattle are consigned at Kansas City as aforesaid is not permitted and cannot sell or dispose of said cattle at the Kansas City market as aforesaid to any buyer or speculator at the Kansas City Stock Yards unless said buyer or speculator is a member of the Traders' Live Stock Ex-
12 change, and these defendants, and each of them, unlawfully and oppressively refuses to purchase cattle or in any manner negotiate or deal with or buy from any commission merchant who shall sell or purchase cattle from any speculator at the said Kansas City Stock Yards who is not a member of the said Traders' Live Stock Exchange; that by and through the unlawful agreement, combination and conspiracy of these defendants, the business and traffic in cattle at the said Kansas City Stock Yards is interfered with, hindered and restrained, thus entailing extra expense and loss to the owner and placing an obstruction and embargo on the marketing of cattle shipped from the states and territories aforesaid to the Kansas City Stock Yards.

And your orator further shows that in pursuance of the unlawful agreement, combination and restraint of trade as aforesaid, that the officers and Board of Directors of the said Traders' Live Stock Exchange have within three months last past imposed a fine upon certain of the members of the said Live Stock Exchange who had traded with persons, speculators upon the markets who were not members of the said Live Stock

Exchange, and within three months last past have imposed fines upon members of said Live Stock Exchange who have traded with commission firms at said Kansas City Stock Yards which said commission firms had bought from, and sold cattle to, speculators upon said market who were not members of the said Live Stock Exchange.

And your orator further avers that each of these defendants have been associating themselves together in said associations known as the Traders' Live Stock Exchange, and in carrying out the purpose and aims of said Exchange and by the conduct of business as aforesaid, at the Kansas City Stock Yards, agreed, combined, conspired and confederated together in violation of the laws of the United States, and particularly in violation of Section 1 of the Act of Congress approved July
13 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and in prosecution of said unlawful combination have agreed and confederated to hinder and delay the business of buying and selling cattle at the said Kansas City market as aforesaid, and have further in restraint of trade and commerce between the said states confederated together to prevent and restrain all other persons who are not members of the said Traders' Live Stock Exchange in the prosecution of the business in which the said defendants are engaged.

And your orator further shows to the Court that the object, aim and purpose of the defendants and their associates in organizing the Traders' Live Stock Exchange was and is to prevent the sale by any commission firm at the Kansas City Stock Yards of any cattle to any person who might be a buyer and speculator upon the market who is not a member of the said Live Stock Exchange.

In consideration whereof, and inasmuch as your orator is relievable only in the premises in this Honorable Court, where matters of this nature are properly cognizable and relievable, your orator respectfully prays that your Honors will order, adjudge and decree that the said Traders' Live Stock Exchange be dissolved, and that said defendants and each of them, be provisionally and permanently enjoined and prohibited from entering into or continuing in any sort of combination, contract, agreement or confederation to deprive the people engaged in shipping, selling, buying and handling live stock received from the states and territories aforesaid, and intended to be sold to the packing houses at Kansas City, Kansas, and Kansas City, Missouri, or to other persons or corporations, or intended to be shipped to other states and territo-

ries, or to foreign markets, from enjoying free access to the markets at Kansas City as aforesaid, and to the facilities afforded by the Kansas City Stock Yards as fully as the defendants and their associate members of the said
14 Traders' Live Stock Exchange.

And your orator further prays that said defendants and each of them, their servants, agents and employes, be provisionally and perpetually enjoined and restrained from enforcing the aims, objects and purposes of the said Traders' Live Stock Exchange, or of yielding obedience thereto; also from imposing or attempting to impose any fines or penalties upon any of their members for trading with any person at the said Kansas City Stock Yards; also from discriminating in any manner whatever against any person who is not a member of said Traders' Live Stock Exchange, solely because of such non-membership; also from refusing by united or concerted action to deal or trade with persons who are not members of the said Traders' Live Stock Exchange, solely because of such non-membership, or from dealing or trading with any commission firm who may transact business with any person not a member of said Traders' Live Stock Exchange; also from entering into any contract, combination or conspiracy, limiting or attempting to limit the right of any person in business at said Kansas City Stock Yards to freely deal in live stock thereat.

And your orator also prays for such other, further or different relief herein, with its costs, as equity may warrant or to the Court may seem meet. To the end therefore, that said defendants may, if they can, show why your orator should not have the relief herein prayed for, and may, according to their best and utmost knowledge, remembrance, information and belief, full, true, direct and perfect answer make, but not under oath, answer under oath being specially waived, to each and all matters and things in this bill contained, and that as fully and particularly as if the same were here repeated, paragraph by paragraph, and they were specially interrogated thereunto severally; may it please your Honors to grant to your orator a writ of *subpœna ad respondendum*, issuing out of and under the seal of this Honorable Court, to be directed to the said J. C. Anderson, E. S. Aiken, J. H. Aiken, J. V. Aiken, E. F.
15 Anderson, W. M. Anderson, William B. Archer, John Brown, O. Bjorkman, W. B. Barnes, A. M. Byram, H. A. Benson, A. A. Bidwell, Alex Bradford, A. H. Bayless, R. A. Brown, Ed. Brown, J. P. Butterfield, S. K. Chorn, W. M. Cole, F. B. Chapeze, J. F. Chapin, James D. Cox, H. A. Cubbison, M. Cavey, George W. Crayeraft, E. S. Downs, J. R. Dillingham, M. Donegan, C. M. Davis, K. Donohue, F. J. Donohue, A. Diechman, W. H. Embry, Charles W. Embry, A. N. Egan, S.

H. Farrar, L. Frank, S. B. Floyd, Warner Floyd, H. L. Fetters, L. Frew, Charles Frew, William Fox, Henry Frank, J. W. Farrar, L. D. Graves, P. J. Gosnell, Jacob Gouch, L. F. Green, Philo S. Harris, W. P. Harris, P. H. Harris, A. Haggarty, Walter M. Hair, Balboa Henry, E. Harris, J. P. Holliway, J. R. Hawpe, J. M. Hail, Josiah Hale, George W. Irwin, Henry Jones, John T. Jett, I. M. Johnston, W. E. Johnston, H. M. Johnston, A. J. Judy, H. W. Jett, B. C. Jett, A. Judd, P. Kieney, John Keating, F. T. Kearns, T. S. Kennedy, J. W. Kellog, George H. Liddle, John S. Lindermann, J. N. Leach, John Lorimer, D. C. Lorimer, W. C. Lorimer, L. Levy, R. McMurtrie, George Macdonald, George J. Macdonald, John P. Miller, George W. Miller, Jerry McCarthy, Mike Miller, Otto C. Mason, R. L. Mitchell, B. J. Means, C. G. Manion, R. J. Monroe, P. Marx, J. W. Northern, L. Nathan, F. L. Orvis, C. Orear, William Priestman, A. R. Perkins, D. A. Painter, Charles Park, W. S. Park, Charles Philbrick, M. C. Ryland, J. S. Ryland, J. H. Rymell, Peter Stewart, V. A. Stephens, J. H. Spurlock, E. J. Sweeney, C. C. Sparks, C. Settle, M. C. Spence, John Shobe, Andy Shobe, W. A. Sanders, E. Storm, C. E. Seeley, C. W. Seeley, A. Swanson, W. E. Tower, W. C. Trower, James Troutman, James S. Thompson, J. R. Wilhite, Arthur Wilhite, John Wilhite, W. J. Woolrey, A. M. Winslow, Jerry Wolf, Lester Wolf, A. Wolf, David Welsh, John L. Wilson, Henry Weill, Samuel Weill, J. A. Winstead, C. E. Wainscott, Thomas Welch, R. P. Yocum and W. H. Yancey, commanding them and each of them, on a certain day and under a certain penalty to
16 be therein inserted, to appear before your Honors in this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises and further to stand to, perform and abide by such further order or decree as to your Honors shall seem meet; and also a writ of provisional and a writ of perpetual injunction to the same tenor, purport and effect as is hereinbefore set forth and prayed and your orator as in duty bound will ever pray.

JOHN R. WALKER,
United States Attorney, Western District of Missouri,
Solicitor for Complainants.

JOSEPH McKENNA,
Attorney-General of the United States.

State of Missouri,
County of Jackson—ss.

John R. Walker, being duly sworn, on oath does state that he has read the foregoing bill and knows the contents thereof, and that he verily believes the statements therein contained are true.

JOHN R. WALKER.

Subscribed and sworn to before me this 7th day of June, 1897.

ADELAIDE UTTER,
[Seal] Clerk U. S. Circuit Court, for
Western Division, Western District of Missouri.

And thereafter, to wit, on the 9th day of June, A. D. 1897, an entry of appearance was filed in the above entitled cause.

Said entry of appearance is in words and figures as follows, to wit:

17 In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

The United States of America, Plaintiff,
No. 2196. vs. In Equity.
J. C. Andrews et al., Defendants.

Now come the defendants herein by their attorneys and enter their appearance in the above entitled cause, and waive the issuance and service of any subpoena herein, except the defendant, Thomas Welch, who is deceased.

R. E. BALL and
I. P. RYLAND,
Solicitors and Attorneys for Defendants.

And thereafter, to wit, on the 30th day of June, A. D. 1897, the following affidavits were filed by the complainant in the above entitled cause:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

United States, Plaintiff,
No. 2196. vs. In Equity.
J. C. Anderson et al., Defendants.

Charles E. Doerr, of lawful age, being duly sworn, on oath states: I am a trader and speculator on the Kansas City Stock Yards, and have been for more than a year last past. I am acquainted with the association known as the Traders' Live Stock Exchange and the members thereof. The officers and members of said Exchange have interfered with other speculators trading upon the yards who are not members of said association. I am not a member of said association. A
18 number of commission firms on the yards have declined to do business with me, or to permit me to do business through them, claiming that they had been notified by the officers and members of the Traders' Live Stock Exchange not to do so. About one year ago I was negotiating with one Artie McCoy, who was a salesman of the commission firm of Fish, Tower & Doyle, and whilst so negotiating with him, and

endeavoring to sell him a bunch of cattle, one Thomas Mack, a member of the Traders' Live Stock Exchange, came up and in my presence notified the said Artie McCoy not to trade with me as I was not a member of their association. I told him I did not think it made any difference and he said he would see some of the officers of the association about the matter. He left and in a few moments returned and said that they did not want him to trade with the affiant, and thereupon the said McCoy declined any further negotiations with affiant. The object and aim of said association is to limit the privilege of trading and speculating upon the market to those persons who are members of said association. About one year ago I was in partnership with one J. H. Spurlock, trading and speculating at the stock yards. He was a member of the Traders' Live Stock Exchange. I was not and the members of said Exchange forced him to dissolve the partnership and cease to do business with me, because of my non-membership.

C. E. DOERR.

Subscribed and sworn to before me this 30th day of June, 1897.

[Seal] ADELAIDE UTTER,
Clerk U. S. Cir. Ct., W. D. W. D. Mo.

19 In the Circuit Court of the United States, Western Division of the Western District of Missouri.

United States, Plaintiff,
No. 2196. vs. In Equity.
J. C. Anderson et al., Defendants.

Engelbert Schmidt, of lawful age, being duly sworn upon his oath deposes and says: I am a trader and speculator at the Kansas City Stock Yards and have been for 15 years past. The yard traders and speculators upon the yards buy all classes of cattle that come there, and re-sell and re-ship the same to other cities and markets in other states, some for export. I am acquainted with the association of the Traders' Live Stock Exchange; that the officers and members of said association will not permit, and do everything in their power to prevent other persons who are not members of said association from trading at the stock yards. Until the month of April, 1896, I was in partnership with one Ludwig Nathan, and we were engaged as speculators and traders on the market, but about the date last above mentioned the officers and members of said Traders' Live Stock Exchange notified me that I could not continue in business at the Kansas City Stock Yards unless I became a member of their association, and they notified my partner that he could not longer continue in partnership and business with me unless I became a member of

said association. I was unwilling to become a member of said association and the partnership between my partner and myself was dissolved through the influence of the said Exchange. I have attempted to buy cattle from a great many commission firms and their salesmen at the Kansas City Stock Yards but so soon as I would go into the yards where the cattle were that were consigned to said commission firms and attempt to purchase same, some of the defendants would come along, call the salesman to one side, and after having a conversation with him which I could not overhear, he would invariably return to me and say that he could not price cattle to me, or sell
20 the same to me as he had been warned by the members of the Exchange not to do so

ENGELBERT SCHMIDT.

Subscribed and sworn to before me this 30th day of June, 1897.

ADELAIDE UTTER,
[Seal] Clerk U. S. Cir. Ct., W. D. W. D. Mo.

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

United States, Plaintiff,
No. 2196. vs. In Equity.
J. C. Anderson, et al. Defendants.

Mellen F. Blanchard, of lawful age, being duly sworn upon his oath says: I am a member of the firm of Blanchard & Erke, live stock commission men doing business at the Kansas City Stock Yards; that the buyers at the Kansas City market consist of the following classes: buyers for the various packing houses; buyers who take orders for cattle to be shipped to other markets in other states and for export; farmers and feeders who come in from the country and go on the market and buy for their own use; and then a class composed of those who are known as "yard traders" and "speculators." This latter class purchase the various classes of cattle that come to the market and speculate therein. A number of these traders and speculators make their purchases through some commission house, and the commission house pays the purchase money, whilst others pay themselves for the stock which they purchase. About the month of February, 1897, one Charles H. Howard was engaged in business at the stock yards and did some business through my firm; that is, he bought cattle from other parties at the yards for which our firm paid, and for which we charged him a commission. Soon afterwards, I was cautioned by some of the members of the
21 Traders' Live Stock Exchange against having any further business transactions with the said Howard. He

was not a member of said Association. About the month of March or April, 1897, two traders and speculators on the yards made me a bid on a bunch of cattle which I accepted, but subsequently these parties declined to take the cattle stating that they had been notified by members of the Exchange not to do so, as I was still carrying the said Charles H. Howard, but when convinced that I was no longer carrying the said Howard, and that he was not trading upon the yards through our firm, they agreed to take, and did take the cattle.

M. F. BLANCHARD.

Subscribed and sworn to before me this 30th day of June, 1897.

ADELAIDE UTTER,
Clerk U. S. Cir. Ct., W. D. W. D. Mo.

[Seal]

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

United States, Plaintiff,
No. 2196. vs. In Equity.
J. C. Anderson et al., Defendants.

Norman B. Greer, of lawful age, being duly sworn upon his oath deposes and says:

That I am the manager of the business of the firm of Greer, Mills & Company, a live stock commission firm, doing business at the Kansas City Stock Yards; that I sell the cattle for this firm which are consigned and shipped to them; that of all cattle received at the Kansas City Stock Yards about 60 per cent are sold directly to packers at Kansas City; that about 5 per cent of all cattle received at the Kansas City Stock Yards are only stopped here temporarily for feed and water and go through to their points of destination without changing hands; that of the remaining 35 per cent of all the cattle received here about 15 per cent are purchased by agents for eastern firms or purchasers, the purchases at the Kansas City Stock Yards being through commission firms, and about 20 per cent of all the cattle received on the market are sold to speculators upon the market; that there is an association of traders and speculators at the Kansas City Stock Yards known as the Traders' Live Stock Exchange; said Exchange charges a fee of $500 for a membership therein; that the members of this said Exchange deal not only in stockers and feeders but in other classes of cattle, buying, re-selling and re-shipping to other markets; that the said Traders' Live Stock Exchange does not permit other traders and speculators upon the market; that said Exchange does not permit commission firms at said stock yards to sell cattle consigned to them to any trader or speculator upon the market who is not a member of

said association; that the commission firm for which I am manager as aforesaid has been notified by the officers and members of said Traders' Live Stock Exchange not to sell cattle to certain speculators on the market who are not members of said association; that on several occasions about the month of December, 1896, the commission firm of Greer, Mills & Company did sell cattle to traders and speculators on the market who are not members of said association, and that thereupon the said association and the members of said association did boycott said firm, and refused to purchase any cattle from said commission firm and refused to go into the lots and look at cattle which had been consigned to them.

Affiant further states that the pens assigned by the Kansas City Stock Yards Company to the speculators and
23 traders on the yard are only intended for the penning of stockers and feeders, but all other classes of cattle handled by traders and speculators on the yards are located promiscuously throughout the yards in Kansas and in Missouri, and very frequently stockers and feeders are ordered into yards other than those which have been assigned them.

Affiant further states that of the classes of cattle known as stockers and feeders received at the Kansas City Stock Yards, a great many are purchased by feeders from the States of Iowa, Illinois, and other states; that the members of said association purchase all classes of cattle, many fat cattle which they ship to other states and to other markets.

NORMAN B. GREER.

Subscribed and sworn to before me this 30th day of June, 1897.

ADELAIDE UTTER,
[Seal] Clerk U. S. Cir. Ct., W. D. W. D. Mo.

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

United States, Plaintiff.
No. 2196. vs. In Equity.
J. C. Anderson et al., Defendants.

Joseph Sanderson, of lawful age, being duly sworn, upon his oath deposes and says: I have been engaged since about the month of September, 1891, as a trader and speculator at the Kansas City Stock Yards and was engaged in such business until the month of July, 1896. I had been trading on the yards through the commission firm of Noel & Titsworth. Some time in the month of July, 1896, I was in the office of the said firm of Noel & Titsworth, when Mr. John Aiken, one of the

directors of the Traders' Live Stock Exchange, came
24 into the office and called Mr. John Titsworth, a member
of the firm of Noel & Titsworth, and Mr. T. H. Broadus, their cattle salesman, out of the office into the hall. Within a few minutes, Mr. Titsworth and Mr. Broadus returned into the office and announced to me that they would have to quit paying for any more cattle purchased [my] me, as they were threatened with a boycott by the Traders' Live Stock Exchange should they do so, and advised me to sell out what cattle I had in the pens and quit. I sold such cattle as I had on hand at that time and ceased to do business at the yards. Thereafter I hired to John Lorimer, a member of the Traders' Live Stock Exchange. My duties were to sell cattle for him and weigh them up as a salesman. I began working for him on the 23rd day of August, 1896; that in the month of September, 1896, the Traders' Live Stock Exchange passed an amendment of Rule 12 of their Rules and By-Laws, which prohibited any member of the Exchange from employing any person to either buy or sell cattle unless such person held a certificate of membership in the Exchange, whereas, prior to that time, Rule 12 only prohibited members of the Exchange from employing persons as a cattle buyer who was not a member of the Exchange, but did not prohibit the employment of a person not a member of the Exchange as a cattle salesman. This amendment to Rule 12 was to take effect on the 1st day of March, 1897, at which time I was required to give up my employment and cease selling cattle. Since March 1st, I have been out of employment, being unable to find any employment whatever at the Kansas City Stock Yards, or to purchase or sell any cattle at the said stock yards because of the action of the officers and members of the Traders' Live Stock Exchange.

Yard traders and speculators upon the Kansas City Stock Yards buy all classes of cattle which come on the market, cattle that are intended for export, cattle that are intended for
other markets in other cities and states; butchers' stock
25 that are intended to be sold to packers in Kansas City Missouri, and Kansas City, Kansas, and in other cities and states, and stockers and feeders which are intended for sale to farmers and feeders in the States of Missouri, Illinois, Iowa, Indiana, Ohio and other states. The aim and object of the said Traders' Live Stock Exchange, is to control the price of certain classes of cattle upon the market, and to prevent all other persons from speculating on the yards, who are not members of said association. The members of said Traders' Live Stock Exchange are divided into companies of ten, with a captain to each ten. If any trader or speculator shall offer a price for a bunch of cattle on the yards, no other trader

or speculator will offer any higher price if he knows that the offer has been made, and in this way force the sale of cattle at the price fixed by the speculator who is a member of said organization.

JOSEPH SANDERSON.

Subscribed and sworn to before me this 30th day of June, 1897.

[Seal] ADELAIDE UTTER,
Clerk U. S. Cir. Ct., W. D. W. D. Mo.,

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

United States, Plaintiff,
No. 2196. vs. In Equity.
J. C. Anderson et al., Defendants.

John W. Crumbaugh, of lawful age, being duly sworn upon his oath deposes and says:

I am engaged in business at the Kansas City Stock Yards; my business is that of what is commonly called a speculator or yard trader, and have been so engaged for five years last past; that the Kansas City Stock Yards is the second largest live stock market in the world; that of all the cattle received upon the market, a certain number are billed through
26 to other markets and are only stopped here temporarily for watering, feeding and resting; for the remainder which are sold upon the market the only classes of buyers are as follows: buyers for the various packing houses located at Kansas City; "order men" who purchase on orders for dealers in other markets, such as Chicago, New York, Buffalo, St. Louis, Omaha and Boston, and for persons who are engaged in exporting cattle to London and other European markets. Some few cattle are sold directly to farmers and feeders who purchase for removal to their farms. Some cattle are sold to commission firms who have country orders for feeders and stockers; that the only class of purchasers in addition to the above named are what are known as speculators or yard traders. These speculators or yard traders purchase cattle on the market for speculation; they purchase all classes of cattle; they purchase stockers and feeders for re-selling; they purchase fat cattle that are intended for other markets and for export; they purchase butcher stock, which are re-sold to packers located at Kansas City, Missouri and Kansas City, Kansas, and they purchase quarantine cattle subject to government inspection; they purchase cattle that are billed through to other markets, with the privilege of sale on the Kansas City markets; that these defendants have organized themselves into an association known as the Traders' Live Stock Exchange, and do not permit any other speculators or

yard traders to transact business at the Kansas City Stock Yards who are not members of said Exchange; that the members of said Exchange do not permit commission firms who are located and doing business at the Kansas City Stock Yards to sell cattle to yard traders or speculators who are not members of said Exchange, and on several occasions when commission firms have sold cattle to yard traders and speculators not members of said association, they have been boycotted by said association and its members; and the members of
27 said association would refuse to purchase cattle from said commission firms or even go to pens in which their cattle were located, and look at them; that a large majority of the yard traders and speculators at the Kansas City Stock Yards trade through commission firms, the said commission firms guaranteeing all payments for purchases made by them; that in very many instances the said Traders' Live Stock Exchange and its members have gone to commission firms and threatened to boycott them unless they ceased to do business with yard traders and speculators who are not members of said association, and unless they ceased to pay for stock purchased by them; when this Traders' Live Stock Exchange was about to be organized in the fall or winter of 1895, I was invited to join said Traders' Live Stock Exchange. The object of said association was stated to me at the time by those requesting me to join them, to be to prevent any speculators and yard traders from carrying on business at the yards who did not become members of said association, and thus limit the number of those who could engage in such business at the yards.

Affiant further states that commission firms doing business at the Kansas City Stock Yards have refused positively to sell him stock, claiming that they have been notified by the officers of the Traders' Live Stock Exchange not to do so, for the reason that he, affiant, was not a member of said Exchange.

JOHN W. CRUMBAUGH.

Subscribed and sworn to before me this 30th day of June, 1897.

ADELAIDE UTTER,
[Seal] Clerk U. S. Cir. Ct., W. D. W. D. Mo.

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

United States, Plaintiff,

No. 2196. In Equity. vs.

J. C. Anderson et al., Defendants.

28 Richard Sheehan, of lawful age, being duly sworn, upon his oath deposes and says:

I am a speculator or yard trader in the Kansas City Stock Yards and was for 23 years, until about a year ago, when I

was driven out of business through the association known as the Traders' Live Stock Exchange, and its members; that there were upon the yards men known as speculators and yard traders, who purchased for re-selling and speculation all classes of cattle coming to the stock yards, fat cattle, which were intended for export and for other markets; butcher cattle which were intended to be sold to packers here and at other points, and also cattle which are known as stockers and feeders. There are and have been upon the yard purchasers for the various packing houses; order men; that is, those who take orders for firms at other markets, and who purchase for export; in addition, live stock commission firms that are engaged at the yards purchase cattle upon orders for farmers and feeders, and in addition to these, there are speculators upon the market who are known as yard traders or speculators, and these, as stated above, purchase and re-sell all classes of cattle; that whilst the Kansas City Stock Yards Company have assigned to the speculators and yard traders certain pens, yet in truth, cattle purchased by speculators and yard traders are put in pens promiscuously all over the yard, wherever they happen to be at the time of the purchase; that stockers and feeders is the only class of cattle that are permitted in the yards assigned to yard traders and speculators; that all butchers' stock, cows and heifers purchased by speculators and yard traders are penned in the yards, either in Missouri or Kansas, and of stockers and feeders purchased by the speculators and yard traders they are not required to be placed in the pens so assigned unless they are to be kept over on the market for future sales; that the officers and members of the said
29 Traders' Live Stock Exchange do not permit any other yard traders or speculators upon the market in any class of cattle than those who are members of said association. I was for 23 years a trader and speculator upon the yards and about a year ago I was forced to cease business there because of the opposition of the officers and members of the said Traders' Live Stock Exchange. I could not purchase cattle from any commission firm at the yards, nor get any commission firm upon the yards to pay for cattle purchased by me, all said firms giving as a reason therefor that they had been threatened with a boycott by said association if they should do so; that the firm of Fletcher & Company, through whom I had been doing business for several years, ceased at once all business transactions with me, and gave as a reason that they were threatened with a boycott if they longer continued.

RICHARD SHEEHAN.

Subscribed and sworn to before me this 30th day of June, 1897.

ADELAIDE UTTER,

[Seal] Clerk U. S. Cir. Ct., W. D. W. D. Mo.

And thereafter, to wit, on the 1st day of July, A. D. 1897, the following affidavit was filed by the complainant in the above entitled cause:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

United Sates, Plaintiff,
No. 2196. In Equity. vs.
J. C. Anderson et al., Defendants.

Charles H. Howard, of lawful age, being duly sworn, upon his oath deposes and says:

I have been in business at the Kansas City Stock Yards for about 11 years; that until about the 1st of January, 1897, I was working for a commission firm at the Stock Yards as cattle salesman; since that date I have been trading upon the yards as a speculator or yard trader. I am acquainted with the Traders' Live Stock Exchange, its members and officers, and know the purposes of its organization and its aims. I have been sought by members of said Exchange to become a member thereof, and said members told me at the time that I could do no business as a trader or speculator at the yards unless I did become a member thereof. The yard traders and speculators at this market deal in all classes of cattle that come to said market; their largest trade is in what is known as stockers and feeders, but they in truth purchase all classes, fat cattle, cattle intended for export, cattle intended for other markets in other cities and states, butchers' stock, intended for packers in Kansas City, Missouri and Kansas City, Kansas, and other cities and states, as well as stockers and feeders. That the purchasers for the various classes of cattle that come to the market are buyers for various packing houses at this place; order men, who purchase on orders for firms in other cities and states, commission men who purchase stockers and feeders for farmers and feeders from the country, and traders and speculators; that the members of the said Exchange do not permit any one to trade or speculate upon the market who is not a member of their association; that they do not permit any commission firm doing business at the Kansas City Stock Yards to sell cattle to any speculators or yard traders who are not members of said association, nor to pay for cattle purchased by traders and speculators not members of said association. I was unable to find any commission firm at the Kansas City Stock Yards who would sell me cattle or pay for cattle that I might purchase from others, all commission firms stating to me as a reason that they were afraid of a boycott from the officers and members of the Traders' Live Stock Exchange.

CHARLES H. HOWARD.

Subscribed and sworn to before me this 1st day of July, 1897.

[Seal] ADELAIDE UTTER,
Clerk U. S. Dist. Mo.

31 And on the same day, to wit on the 1st day of July, A. D. 1897, the defendants filed affidavits in the above entitled cause.

Said affidavits are in words and figures as follows:

United States of America,
State of Missouri,
County of Jackson—set.

Eugene Rust, of lawful age, being first duly sworn, upon his oath says:

I am General Superintendent of the Kansas City Stock Yards Company. I have been connected with the said Stock Yards for sixteen and one-half years last past, and have been General Superintendent thereof since January 1st, 1895; I am thoroughly familiar with the receipts and shipments of cattle received at and shipped from said yards during all of said time. Accurate records of receipts and shipments are kept by said Company, owning said yards, and to these records I have free access.

The total receipts of cattle and calves for the years 1895, 1896 and the first five months of 1897 are as follows:

For the year 1895, Cattle	1,613,454
Calves	76,198
Total receipts for 1895	1,689,652
For the year 1896, Cattle	1,714,532
Calves	100,166
Total receipts for 1896	1,814,698
For first five months of 1897, ending May 31st ..... Cattle	624,395
Calves	29,742
Total	654,137

I know of the organization known as "The Traders' Live Stock Exchange." This organization has been of benefit to the live stock market at Kansas City, by furnishing constant buyers for cattle shipped to said market no matter how
32 large the receipts for any one day or series of days and by raising the standard of business integrity among its members, in that it requires every member to comply with

his business promises and verbal agreements. No embargo is placed upon any one purchasing or desiring to purchase cattle at the Kansas City Stock Yards, but a free and open market is afforded to all buyers or sellers. The members of the above named organization are engaged in business of buying and selling cattle on the local market and are competitors among and against each other. Their said organization in no way restrains or interferes with interstate or local commerce, and the members of this organization do not monopolize or attempt to monopolize the business of buying and selling cattle at Kansas City.

The said organization does not in any way tend to limit or decrease the number of cattle marketed at Kansas City, but has the contrary effect, in that its members furnish a large number of constant and daily buyers, which creates competition, thereby making a stronger and more even market for the sale of live stock.

Of the total receipts of cattle at the Kansas City Stock Yards for the years 1895, 1896 and 1897, not to exceed 15 per cent have been billed to other markets with the privilege of the Kansas City market, and about eighty-five per cent of the total receipts for the said years have been billed to the Kansas City market alone; for a term of years last past, the percentage of cattle billed to other markets has shown a gradual decrease, and further this deponent saith not.

EUGENE RUST.

Subscribed and sworn to [by] me this 15th day of June, 1897.

My commission expires September 1st, 1900.

[Seal] ISAAC P. RYLAND,
Notary Public in and for Jackson County, Missouri.

33 State of Missouri,
County of Jackson—ss.

Jerome D. Eubank, of lawful age, being first duly sworn upon his oath says:

That he is engaged in the business of buying cattle on the Kansas City market on order; that he knows the Traders' Live Stock Exchange, and has known it since its organization; that the members are dealers in stockers and feeders on the market at Kansas City; that since the organization was formed the market at Kansas [—] for that class of cattle has steadily improved until it has been for the past year the largest and best market in the United States; that said market is free and open and the operations of the members of said Exchange have made it more steady and uniform than it ever was before, and

so far from being a hindrance or restraint upon said market, said Exchange has resulted in improving the same to the advantage of the shippers of such stock; that the members of the Exchange do not monopolize or attempt to monopolize the market for cattle, but are in constant competition with various other buyers and sellers of the same class of cattle; and in affiant's judgment it is not possible for the members of said Exchange separately or together, to control said market, either in the supply, or in prices, and no such attempt has been made so far as affiant is informed.

J. D. EUBANK.

Subscribed and sworn to before me this 26th day of June, 1897.

[Seal] ISAAC P. RYLAND,
Notary Public in and for Jackson County, Missouri.

State of Missouri,
County of Jackson—ss.

John N. Payne, of lawful age, being first duly sworn,
34 upon his oath says:

That he is engaged in the live stock business, making a specialty of buying cattle on the Kansas City market on order; that he knows of the Traders' Live Stock Exchange, and has known it since its organization, and that its members are dealers in stockers and feeders on the market at Kansas City, which is the largest and best stocker and feeder market in the United States; and that said market is open to all parties to either buy or sell and the operation of said Traders' Exchange has given us a higher order and a more steady and uniform way of doing business; therefore, instead of being a hindrance or restraint on said market, the said Exchange has resulted in improving the same, to the advantage of the shippers of such stock; that the members of the Exchange do not monopolize or could not monopolize the market for cattle, but are in competition with various other buyers and sellers of the same class of cattle; and in affiant's judgment, it is not possible for the members of the Exchange, either separately or together, to control said market either in the supply or in prices, and no such attempt has been made so far as the affiant is informed.

JOHN N. PAYNE.

Subscribed and sworn to before me this 26th day of June, 1897.

[Seal] ISAAC P. RYLAND,
Notary Public in and for Jackson Co., Missouri.

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

United States, Plaintiff,

No. ..... In Equity. vs.

J. C. Anderson et al.

35 The undersigned, being duly sworn on their oath state:

That they are commission merchants at the Kansas City Stock Yards, and have been for some time past; that they know the organization known as the Traders' Exchange and are personally familiar with its operation and effect on the market. That the members are exclusively engaged in local trade of buying and selling; that the class of cattle in which they deal namely, stockers and feeders, are not exclusively handled by them, and they do not attempt to monopolize the trade in such cattle and it would not be possible for them to do so, if they did attempt it. That the market is, and has always been, a free and open one, and the controlling prices from day to day, on said market, are not determined by the said yard traders and being in competition with other classes of buyers, they could not succeed in controlling the prices if they attempted to do so.

The affiants state that since the organization of said Exchange, the branch of business at said market in which the members are engaged has greatly and constantly improved. That the operations of the Exchange have greatly tended to this improvement, and have contributed thereto, and no hindrance or restraint of any kind and of prejudice to the interest of shippers to said market have resulted from the operations of said Exchange and to the knowledge and belief of the affiants, no purpose exists or ever has existed on the part of the members of said Exchange, to hinder or restrain or in anywise injure the market for any class of cattle at said yards.

(Signed) S. D. Irwin—Irwin Bros.
T. E. Ladd—Ladd, Penny & Swazey.
D. Olinger—M., K. & T. Com. Co.,
Thos. B. Lee, V. P. & Mngr. Chicago Live Stock Com. Co.
G. I. Gann Co.
J. K. Southee, of Southee & Kirk.
S. P. Woods, of the Northwestern Com. Co.
36 H. B. Dorsett, Firm Southee & Kirk.
A. Isaacson, of Olander & Isaacson.
G. W. Sanders, of Siegel-Sanders Com. Co.
Jno. E. Hale, of John E. Hale & Co.

F. G. Robinson, of Ryan, Keeney & Robinson.
G. H. Pierson, of Pierson-Goddard Com. Co.
Woodson McCoy, of McCoy Bros.
J. Baker, of Baker Com. Co.
W. F. Huston, of Taylor, Taylor & Huston.
H. B. Patterson, of Patterson & Hargis.
S. R. Trower, of Thos. Trower & Son.
D. C. Beatty, of C. M. Keyes & Co.,
S. R. Walker, of Walker-Russell Com. Co.
James Crowley, of McDonald, Crowley & Farmer.
G. W. Stockwell & Co.
S. G. Burnside, of Burnside, Jordan & Co.
T. S. Hutton, of Strahorn-Hutton-Evans Com. Co.
A. T. Mustion, of Drovers' Com. Co.
W. B. McAllister, W. B. McAllister & Co.
T. B. Patton, of Patton & Martin.
Wm. Wright, of Wright & Hanna.
L. A. Allen, of The K. C. L. S. C. Co.
Chas. W. Campbell, of K. C. L. S. C. Co.
Chas. E. Stoller, Stoller C. Co.
Geo. W. Foster, F., McD. & B.
A. B. Bachman, M., K. & T. C. Co.
W. F. Moore, W. F. Moore L. S. Com. Co.
C. H. Means, C. G. Means & Sons.
E. Lloyd, M., K. & T.
R. W. Ryan, Ryan, Keeney & Robinson.
S. W. Campbell, of R. K. Campbell & Co.
Geo. Tamblyn, of Tamblyn & Tamblyn.
Jno. F. Gillespie, of A. J. Gillespie & Co.
37 C. G. Bridgeford, V. P. Lorimer, Bridgeford & Co.
L. S. Jones, of Jones Bros.
R. C. White, of White, Cowgill & McWilliams.
Ben. L. Welch, of Ben. L. Welch & Co.
D. C. Koogler, of D. C. Koogler Co.
E. M. Parlin, of Thies & Parlin.
D. R. Rice Com. Co.
J. S. McIntosh, of McIntosh & Peters.
J. C. Scruggin, of V. & S.
L. A. Lennon, of Duke, Lennon & Harrington.
Gilman Reed of G. R. Co.
James Stephens & Co.
Jno. D. Dobyns, of Geo. Holmes Com. Co.
Geo. W. Campbell, of Campbell, Hunt & Adams.
H. Hopkins, of Hopkins, Kiely & Co.
J. H. Lampe, of Drumm-Flato Com. Co.

L. E. White & Co.
Geo. T. Hall, Scruggs, Hall & Co.
F. O. Fish, Fish, Tower & Doyle L. S. Com Co.
Zeb. F. Crider, Zeb. F. Crider Com. Co.
Wm. M. Schwartz, of Schwartz, Bolen & Co.
B. F. Baldwin, of B. F. B. & Co.
C. T. Baldwin, of Geo. Holmes Com. Co.
Hamer Brown, of Kas. & Neb. Com. Co.
Wm. A. Rogers, of Rogers Com. Co.
J. P. Emmert, Salesman for Moffatt Bros. & Andrews.
T. J. Timmons, Cassidy Bros. & Co.
E. E. Trowbridge, of Standish & Trowbridge.
Geo. C. McMullin, of Chas. Dixon Com Co.
F. F. Farmer, of Barnes, P. & F.
Andrew Gillespie, Clay, Robinson & Co.
C. J. Boyle, Lincoln, Boyle & Co.
Wm. Epperson, of Wm. Epperson & Co.
J. C. Hall, of J. C. Hall & Co.
M. M. Cable, of M. M. Cable & Co.

38 Subscribed and sworn to before me this 2nd day of July, 1897.

My commission expires Sept. 1, 1900.

[Seal] ISAAC P. RYLAND,
Notary Public in and for Jackson Co., Mo.

The following is attached to the foregoing affidavit:

"Official List.

The following is the official list of Live Stock Commission firms doing business at the Kansas City Stock Yards. Our customers supplied with the Drovers' Telegram.

~~H. C. Abbott & Co.~~
Burnside, Jardon & Co.
Geo. R. Barse Live Stock Commission Co.
Barnes, Parrott & Farmer.
~~M. T. Burwell & Co.~~
Blanchard & Ehrke.
B. F. Baldwin & Co.
Campbell, Hunt & Adams.
R. K. Campbell & Co.
Cassidy Bros. Live Stock Com. Co.
Chicago Live Stock Commission.
Zeb. F. Crider Com. Co.
Clay, Robinson & Co.
Charles Dixon Com. Co.
Myron M. Cable & Co.
Drumm-Flato Com. Co.

Duke, Lennon & Harrington.
Drovers' L. S. Com Co.
Wm. Epperson & Co.
Evans-Snider-Buel Co.
Foster, McDonald & Blair.
39 Fish, Tower & Doyle Live Stock Com. Co.
A. J. Gillespie & Co.
Greer, Mills & Co.
G. I. Gann & Co.
Jno. E. Hale Com. Co.
J. C. Hall & Co.
Hopkins, Kiely & Co.
W. W. Hall & Co.
Ben Holmes Com. Co.
Geo. Holmes Live Stock Com. Co.
Irwin Bros. & Co.
Inman & Wallingford.
Jones Bros.
Knollin & Booth.
The Kansas & Nebraska Live Stock Com. Co.
Kansas City Live Stock Com. Co.
C. M. Keys & Co.
Ladd, Penny & Swazey.
Lincoln, Boyle & Co.
Lone Star Com. Co.
Larimer-Bridgeford Live Stock Com. Co.
W. B. McAlister & Co.
McCoy Bros.
McDonald, Crowley & Farmer.
McIntosh & Peters.
C. G. Means & Son.
The W. F. Moore Live Stock Com. Co.
M., K. & T. Com. Co.
Moffett Bros. & Andrews.
Noel & Tittsworth.
Northwestern Live Stock Com. Co.
Offutt, Elmore & Cooper.
Olander & Isaacson.
40 Payne, Duncan & Co.
Pierson-Goddard Com. Co.
Patton & Martin.
Patterson & Hargis.
~~M. S. Peters & Co.~~
Rogers Com. Co.
D. R. Rice Com. Co.
Ryan, Keeney & Robinson.
Gilman Reed & Co.
Schwartz, Bolen & Co.

Scruggs, Hall & Co.
Siegel-Sanders Com. Co.
Southee & Kirk.
Jas. Stephens & Co.
G. W. Stockwell & Co.
Stoller Com. Co.
Strahorn-Hutton-Evans Com. Co.
Standish & Trowbridge.
Tamblyn & Tamblyn.
Taylor, Taylor & Huston.
Thies & Parlin.
Thos. Trower's Sons.
Verner & Scroggin.
L. E. White & Co.
Wright & Hannah.
Walker-Russell Com. Co.
Ben. L. Welch & Co.
White, Cowgill & McWilliams.
L. F. Young & Co.
Baker Com. Co.

41 State of Missouri,
County of Jackson—ss.

W. H. Embry, being duly sworn, on his oath states:

That he is President of the Traders' Live Stock Exchange of which the defendants are members; that a full copy of the Articles of Association and By-Laws of said Exchange, with all amendments thereto, is attached to this affidavit; that said Exchange was organized on the .... day of September, 1895.

That at said time an important branch of traffic in cattle at the Kansas City Stock Yards had grown up and has since existed, in which the individuals forming said Association were and are engaged; that said business was that of buying and selling cattle on the local market, and parties engaged in it were and are known as yard traders; that prior to the time of forming said Association, and since, the Stock Yards Company provided and assigned certain pens for the use of such traders in handling and disposing of the stock purchased by them, to which pens cattle bought by any yard trader were and are delivered.

That it was important and to the common interest of all persons engaged in yard trading that the most favorable terms possible should be made with the Stock Yards Company as to the location of said pens, and securing the best possible facilities for handling stock; that the pens assigned to defendants now are and were at the time of the filing of the bill of the Government, located in the State of Missouri.

That at the time of organizing the Exchange and since, certain persons engaged in the business of yard traders were guilty of disreputable business methods, for example, by purchasing culls and afterwards, by arrangement with some commission merchant, mingling them, and having them sold with some other herd consigned to such merchant, or by making purchases without means for payment, and being un-
42 able to sell on the same market day, refusing to consummate such purchase, and by other wrongful conduct, to the scandal of the trade.

That to obtain such advantage and facilities, in the common interest of all, as might be had by united effort, and to correct and prevent such abuses and to promote decent and honorable practices in the trade engaged in by all, the Association was formed, and it had not and has not any other purpose.

The affiant states that it is not true that defendants, at any time, conspired "to prevent all other persons than members of the Traders' Live Stock Exchange from buying and selling cattle upon the Kansas City market;" but the fact is, that in buying cattle defendants are in competition with each other, with the representative buyers of all the packing houses, with the representatives of the various commission merchants, who buy constantly on orders from a distance, and with others who buy on orders and on their own account, none of whom are members of the Traders' Live Stock Exchange, and with these various classes of buyers the defendants constantly deal; that in selling cattle they compete with each other and with shippers and commission merchants offering stock for sale on said market.

The affiant states that it is not and never has been true, as alleged in the bill, page 8, "that the commission firm, person or partnership to whom said cattle are consigned at Kansas City, is not permitted, and cannot sell or dispose of said cattle at the Kansas City market to any buyer or speculator, unless said buyer or speculator is a member of the Traders' Live Stock Exchange," but on the contrary, that statement is absolutely false, and it is true, as is also alleged in the bill, page 6, that they "sell said stock to the packing houses located at Kansas City, Missouri, and Kansas City, in the State of Kansas, and they sell large numbers of said cattle to these defendants and to other persons, who re-sell."

43 The affiant states that when the Exchange has disciplined its members, it has done so only pursuant to authority, given by the rules to the proper tribunal of the organization; that it is true that on one occasion, and for a

short time, the defendants generally abstained from dealing with a certain commission firm, not because said firm dealt with others not members, but because, in the belief of defendants, said firm aided and assisted in disreputable and dishonorable methods of trade.

The affiant states that the business in which the defendants are engaged is that of buying and selling the class of cattle known as stockers and feeders; that said business is purely local to this market; that in quarantine cattle, subject to government inspection, cattle shipped through to other markets with or without the privilege of Kansas City market, and fat cattle sold on the local market or shipped to other states, or to foreign countries, the defendants do not deal.

That of the volume of stockers and feeders sold on the Kansas City market since the formation of the Exchange, not exceeding fifty per cent, in affiant's judgment, have been handled by members of the Exchange, and the rest by others.

That whenever any of the defendants purchase cattle, the Stock Yards Company delivers them, after they are weighed, to the pens set apart and assigned for the use of the yard traders.

That except in rare instances, both purchases and sales made by the defendants, are made from and to persons not members of the Exchange, and in affiant's judgment, about ninety-nine per cent of transactions by defendants are with persons not members of the Exchange.

That it is not true, that the defendants "have agreed and confederated to hinder and delay the business of buying and selling cattle at the said Kansas City market;" but on the contrary, the Exchange was organized to promote, and in affiant's judgment, has greatly promoted the business of buying
44 and selling cattle at the yards.

That it is not true "that the object, aim and purpose of the defendants and their associates in organizing the Traders' Live Stock Exchange was and is to prevent the sale by any commission firm, at the Kansas City Stock Yards, of any cattle to any person who might be a buyer or speculator upon the market, who is not a member of the said Live Stock Exchange;" but the fact is, that buyers of many different classes, as heretofore stated, constantly deal in said market, and continuously since the organization of the Exchange, yard traders not members of the Exchange, have bought and sold there, doing business with commission firms with whom members deal.

That the objects and purposes of the Exchange are as hereinbefore set forth; and when the Exchange provided, by its

Rule Ten, that no yard trader would be recognized and by its Rule Twelve, that buyers or sellers should not be employed by members unless such traders or employes were members, it was meant and intended that those yard traders who did not approve of the objects of the Association, and of concerted action to obtain them, might go their independent way, but the Exchange would not countenance them, nor be responsible for their methods.

The affiant states that it is true that the property of the Stock Yards Company, where cattle are penned and handled, is located partly in Missouri and partly in Kansas and that the shifting of cattle from one side of the state line to the other, in the business of the market, is done by the Stock Yards Company.

That the state line runs through some of the pens and through some of the alleys and it sometimes occurs that in such pens or alleys sales of bunches of cattle are made, through which at the time the State line runs.

The affiant states that the members of the Exchange
45 handle only a part of a particular class of cattle on the local market; that it is impossible for them separately or together, to control the market for such cattle, either in quantity or price; that the market is a free and open one and prices are governed by the supply and demand; and that the defendants have never, individually, or together, attempted to suppres competition in buying and selling such cattle, and such a thing would be impossible, should it be attempted.

W. H. EMBRY.

Subscribed and sworn to before me this 21st day of June, 1897.

My commission expires March 15, 1901.

[Seal] REES TURPIN,
Notary Public, Jackson County, Missouri.

ARTICLES OF ASSOCIATION.

Rules and By-Laws of the Traders' Live Stock Exchange.

We, the undersigned, for the purpose of organizing and maintaining a business exchange, not for pecuniary profit or gain, but to promote and protect all interests connected with the buying and selling of live stock at the Kansas City Stock Yards, and to cultivate courteous and manly conduct toward each other, and give dignity and responsibility to yard traders, have associated ourselves together under the name of Traders' Live Stock Exchange, and hereby agree each with the other, that we will faithfully observe and be bound by the following rules and by-laws and such new rules, additions or amend-

ments as may from time to time be adopted in conformity with the provisions thereof from the date of organization.

Rule 1.

The officers of this Exchange shall consist of a President, and Vice-President, a Secretary, who shall also act as
46 Treasurer; and the Secy. Treasurer shall furnish a good and sufficient bond if the same be demanded of him.

Rule 2.

The President shall appoint the following committees, which shall be approved by the Exchange, at its first regular meeting of each year, namely, a Finance Committee, consisting of four members, an Executive Committee consisting of eight members which shall also constitute the Committee of Arbitration.

Cont. on page 2.

Rule 3.

Sec. 1. It shall be the duty of the President to act as general executive officer of the Exchange, to preside at all regular meetings, call special meetings when necessary and preside over them.

Sec. 2. It shall be the duty of the Vice-President to act and preside in the absence of the President.

Sec. 3. It shall be the duty of the Secretary to keep and preserve the minutes and record of all meetings and to receive and collect all money due the Exchange and keep minute account of the same.

Sec. 4. It shall be the duty of the Executive Commitee to investigate the worthiness and qualifications of all applicants for membership in this Exchange and report on the same favorably or unfavorably.

Sec. 5. The Executive Committee shall also attend to all matters of business that may be referred to them by the President, and discharge such other duties as may rightfully come before them.

Sec. 6. It shall be the duty of the Committee of Arbitration to investigate all grievance of the members of this Exchange relative to business at the stock yards, and adopt such measures as they deem best to amend the same, and their decision shall be final.

Cont. on Page 3.

47 Sec. 7. It shall be the duty of the Finance Committee to audit all bills and accounts of the Exchange, and attend to such other business as may rightfully come before them.

Sec. 8. The President shall also appoint a Sergeant-at-Arms, whose duty shall be to attend the heating, lighting and ventilating the room, attend the door, and see that no unwelcome persons are present at any of the meetings of this Exchange.

Rule 4.

The members of this Exchange shall, by the Executive Board, be divided in companies of one Captain and ten men.

Rule 5.

The officers of this Exchange shall be elected by ballot at its first regular meeting in January for a term of one year.

Rule 6.

The regular meetings of this Exchange shall be on the first Saturday in each month.

Rule 7.

Nine or more members shall constitute a quorum but a less number shall have power to adjourn.

Rule 8.

Sec. 1. Membership in this Exchange shall be $10.00 ten dollars for each member, and upon the payment of said amount, the Secretary shall issue a certificate of membership to all who were enrolled as members of this Exchange prior to March 14th, 1896, and to any other traders who may apply to the Executive Board on or before March 21st, 1896, and be approved by them. Provided. Cont'd on page 4.

See Sec. "a" to Rule 8 on page 11.

Rule 8.

Sec. 1. Cont. that all members enrolled or elected
48 as herein specified, shall within thirty days from March 14th, 1896, apply to the Secretary and pay in full the amount $10.00 ten dollars for such certificate.

Sec. 2. These certificates of membership shall be non-transferable, but this Exchange shall refund the amount of ten dollars $10.00 paid for the same to any member upon the surrender of his certificate, providing there be no unpaid fines against such member.

Rule 9.

All applications for membership shall be made in writing and the same referred to the Executive Committee for investigation, and they shall report on the same at the first regular meeting thereafter. The Exchange shall forthwith vote on such applicant and it shall require a two-thirds vote of all members present to elect such as members of this Exchange.

Rule 10.

This Exchange will not recognize any yard trader unless he is a member of the Traders' Live Stock Exchange.

Rule 11.

When there are two or more parties trading together as partners, they shall each and all of them be members of this Exchange.

Rule 12.

No member of this Exchange shall employ any person as a cattle buyer unless such person hold a certificate of membership in this Exchange.

See amendment on page "15."

Cont'd on page 5.

Rule 13.

No member of this Exchange shall be allowed to pay any order buyer or salesman any sum of money as a fee for buying cattle from or selling cattle to such party.

49

Rule 14.

All members will be held responsible for any violations by their employes not conforming to the above rule.

Rule 15.

All members convicted of any violation of any of these rules shall be subject to a fine, suspension or expulsion as recommended by the Executive Board.

Rule 16.

All bills and accounts against this Exchange shall be read in open session at a regular meeting and referred to the Finance Committee, and if correct, the Secretary shall draw warrants for the same, which shall be countersigned by the President, and the seal of the Exchange placed thereon.

Rule 17.

These by-laws may be changed or amended by a two-thirds vote of all members present at any regular meeting.

Rule 18.

The Secretary of this Exchange shall receive a salary of ($50.00) fifty dollars per annum for the faithful performance of his duty.

Amendments, Changes and Additions to the Rules and By-Laws of the Traders' Live Stock Exchange.

Rule 8.

This sec. amended Aug. 1st 1896.

Sec. 3. All applicants for membership after May 2nd, 1896, shall pay the sum of $250.00 two hundred and fifty dollars for membership in this Exchange. Their certificate shall be transferable in the manner provided for membership in Rule (9) nine of the by-laws of this Exchange. But this Exchange will not redeem any certificates issued after May 2nd, 1896.

50

Sec. 4. For all transfers of membership the party for whom such transfer be made shall pay into the treas-

ury of this Exchange the sum of ($50.00) fifty dollars for such transfer.

Sec. 3. Wording of said section changed so as to read $500.00 five hundred dollars instead of $250.00 two hundred and fifty dollars.

Rule 12.

Amended to read as follows: No member of this Exchange shall employ any person to buy or sell cattle unless such person hold a certificate of membership in this Exchange.

State of Missouri
County of Jackson—ss.

J. P. Holloway, S. B. Floyd, J. R. Wilhite, George Macdonald, S. H. Farrar, Charles Sparks and M. C. Spence being duly sworn on their oaths state: That they are members of the Executive Board of the Traders' Live Stock Exchange; that they have heard read the foregoing affidavit of W. H. Embry, and the matters and things therein stated are true, to the best of their knowledge and belief.

J. P. HOLLIWAY.
S. B. FLOYD.
S. H. FARRAR.
M. C. SPENCE.
CHARLES SPARKS.
GEO. MACDONALD.
J. R. WILHITE.

Subscribed and sworn to before me this 25th day of June, 1897.
My term expires Sept. 1st, 1900.

[Seal] ISAAC P. RYLAND,
Notary Public in and for Jackson County, Missouri.

51 State of Missouri,
County of Jackson—ss.

J. H. Waite, Chester A. Snider, Frank Cooper, J. N. Irwin and Ben Holmes, of lawful age, each being severally sworn upon their oaths depose and say:

That they are engaged in the business of buying and selling cattle on the market at Kansas City as Live Stock Commission merchants; that they know the Traders' Live Stock Exchange and have known it since its organization; that the members are dealers in stockers and feeders on the market at Kansas City; that since its organization the market at Kansas City for that class of cattle has steadily improved, until it has been for the past year the largest and best market in the United States; that said market is free and open and the operations

of the members of said Exchange have made it more steady and uniform than it ever was before, and so far from being a hindrance or restraint upon said market, said Exchange has resulted in improving the same to the advantage of the shippers of such stock; that the members of the Exchange do not monopolize or attempt to monopolize the market for cattle, but are in constant competition with various other buyers and sellers of the same class of cattle; and in affiants' judgment it is not possible for the members of the Exchange, separately or together, to control said market, either in the supply, or in prices, and no such attempt has been made so far as affiants are informed

J. H. WAITE,
CHESTER A. SNIDER,
FRANK COOPER,
J. N. IRWIN,
BEN HOLMES.

Subscribed and sworn to before me this 26th day of June, 1897.

[Seal] ISAAC P. RYLAND,
Notary Public in and for Jackson County, Missouri.

52 In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

United States, ... Plaintiff,
No. .... vs. In Equity.
J. C. Anderson et al., Defendants.

State of Missouri,
County of Jackson—ss.

The undersigned members of the Traders' Live Stock Exchange, defendant, being duly sworn on their oaths, state that it is wholly untrue, as alleged in the affidavits filed by the Government, that members of the Exchange do not compete in buying and selling with each other, but on the contrary they constantly compete with each other, and separately bid against each other for the purchase of cattle on the Kansas City market.

That it is not true that they attempt to limit the number of buyers or yard traders on said market to the present membership of the Exchange, but on the contrary, any and all persons desiring to become members of said Exchange are wel-

come to do so, and to join the same on agreeing to the Articles of Association and By-Laws.

	A. Deichmann.	William Fox.
	Jas. Troutman.	P. Marx.
	Ernst Harris.	C. F. Vann.
	Dave Welsh.	Lester Wolf.
	T. S. Kennedy.	Jerry Wolf.
	J. H. Aikin.	Abraham Wolff.
	W. M. Cole.	A. Judd.
	E. S. Downs.	Andy Shobe.
	S. H. Farrar.	A. H. Bayless.
	Geo. Macdonald.	A. Haggarty.
	E. F. Anderson.	C. E. Seeley.
53	Frank B. Chapeze.	Peter Stewart.
	R. J. Monroe.	W. C. Lorimer.
	A. R. Perkins.	J. V. Aikins.
	John Lorimer.	Henry Frank.
	D. A. Painter.	John Shobe.
	R. P. Yocum.	Charles Frew.
	P. H. Harris.	George W. Liddle.
	C. E. Wainscott.	J. C. Anderson.
	P. J. Gosnell.	

Subscribed and sworn to before me this 2nd day of July, 1897.

My commission expires Sept. 1st, 1900.

[Seal] ISAAC P. RYLAND,
Notary Public in and for Jackson Co., Mo.

State of Missouri,
County of Jackson—ss.

W. P. Neff, of lawful age, being duly sworn, upon his oath says that he is one of the publishers of the Daily Drovers' Telegram, published at Kansas City, Missouri; that his duty requires him to keep accurate daily records of the receipts, shipments and classification of cattle at the Kansas City Stock Yards; that the following statement shows the number of car loads of stockers and feeders sent to the country from said stock yards since Jany. 1st, 1897:

	January	1635
	February	1427
	March	1192
54	April	838
	May	821
	26 days in June	552
	Total	6465

That the above figures are correct to the best of affiant's knowledge and belief.

That the book hereto attached is compiled and published by the said Daily Drovers' Telegram and known as the "Red Book," and the figures therein contained are true and correct to affiant's best knowledge and belief; that Kansas City has grown to be the largest and best market for stockers and feeders in the United States and for the past three years has steadily grown in that respect.

W. P. NEFF.

Subscribed and sworn to before me this 28th day of June, 1897.

[Seal] ISAAC P. RYLAND,
Notary Public in and for Jackson Co., Mo.

(Portion of "Red Book" mentioned in stipulation.)

The Army of Laborers.

The armyof people who are required to transact the live stock business of Kansas City was computed by the Drovers' Telegram on December 10, 1896, with a great deal of accuracy. At that time the following results were ascertained:

	No. men.
Employed by Kansas City's packing houses (average)	7,450
Employed by Kansas City Stock Yards Company	300
Number of commission men at yards	192
Number of office men at yards	102
Number of salesmen employed by commission men	137
Number of yardsmen employed by commission men	115
Number of traveling solicitors employed by commission men	82
55 Yard traders	182
Employed by yard traders	77
Railroad clerks and agents	34
Professional shippers	20
Miscellaneous	60
Daily Drovers' Telegram	29
Stock Yards Horse and Mule Department	50
Total in Kansas City Live-stock industry	8,830

If we multiply this aggregate number of men employed by five, which is customary in arriving at such conclusions, we find that over 44,000 Kansas City's poulation [is] dependent upon the great live-stock industry. The poulation of the combined Kansas Citys is probably 225,000, so that the live-stock industry may be said to support one-fifth of the total population.

Who the Buyers are.

The chief dependence of the Kansas City market, without which no market attains a position to be trusted day in and

day out, is the great demand which her packing houses create, but there are in constant attendance buyers for export companies and for packing houses in other cities. These two interests are adequate to care for the supply of fat stock. As a market for thin cattle, commonly known as stockers and feeders, which are bought to be taken back to the country, Kansas City stands in a class of her own where she has no rivals worthy the name. In 1896 she did considerably more business in this line than any three competitors.

First and greatest of all he has a market that takes all of his stock, whatever its size, age or condition, at a high market value, as here are permanently located competitive buy-
56 ers for all grades of each kind of stock. This market has been created by the investment of several million of dollars in land and the buildings and pens necessary to accommodate the business; all fair-minded people will concede that this money is entitled to a reasonable interest for its use. The Stock Yards Company has given outright hundreds of thousands of dollars to induce the heaviest slaughtering establishments and exporters in the country to locate here, and it is these houses, whose standing and integrity are beyond question, with a large number of "order buyers" for eastern houses, and a couple hundred regular shippers and speculators, that insure the market at all times.

The Kansas City Live Stock Exchange.

The Kansas City Live Stock Exchange is an association organized, not for the purpose of pecuniary profit or gain, as is generally supposed, but to promote and protect all interests connected with the buying and selling of live stock at this market. Membership in it is not compulsory, but represents a privilege, the basis of which is to enforce amongst its members safe, legitimate and high moral principles in the transaction of business. It would be preposterous to think of transacting the immense volume of business at this market at this time without some common understanding; some systematized plan, so plain that all can understand, so just as to commend it to all here engaged. The necessity of it was made plain in the early history of the business. The Stock Yards Company, responsible to the railroad companies, not only for the number of stock received, but also for the carrying charges, found it necessary to have some protection when it surrendered its stock to the commission man. He, in return, needed a system that would enable him to feed, water and handle stock to the best advantage. In selling he had become disgusted with receiving offers or bids for stock that could not be depended upon, and was tired of buying stock that would not be deliv-

ered because some one else bid more after he had bought
57 it. It was vexing to have stock mixed, exchanged, docked or weighed wrong without any protection or means of righting. The packers never knew when they bought anything that they would receive what they bought, and when delivered and paid for, whether the seller had title to the stock, or whether it was stolen or mortgaged property, to be paid for twice.

Last, but not least, the farmer, feeder and shipper was entirely at the mercy of the unscrupulous and unsystematized business methods. It was plain that he needed protection in the way of knowing what it would cost him to have his stock fed, watered, weighed, and sold or bought. He needed honest weighing and straight and legitimate sales. He required not only speedy and correct returns, but must be sure of his proceeds. This chaotic condition of evils and abuses in which all interested shared to a greater or less degree, made the necessity of an organized body such as the Kansas City Live Stock Exchange. In the formation of its rules and by-laws, all the stated evils have been cured, and the vast interests of this market under its control are transacted in such a just and legitimate manner as not only to satisfy all vitally concerned, but as well to receive the indorsement, after thorough examination and trial, of State Legislatures and the courts. So that, if you ask, "What is the Kansas City Live Stock Exchange?" we repeat that it is a business association of all interests represented, with an eye single to systematizing the business at these yards on a basis of correct and high moral principles.

* * * * * *

The greatest development of the year was in the stocker and feeder business. Kansas City again demonstrated that she is the mistress of the situation and stands in a class by herself. The year's shipments to the country were 16,000 cars, approxi-
58 mately a half million head. In 1895 car shipments were 12,537, which until this year, constituted the big year. The relative size of the three western feeder markets is set off in a compilation elsewhere in this book, showing that Kansas City does practically as much feeder business as all outside markets combined.

* * * * *

Stock Cattle Shipments from Competitive Markets.

	1895.	1896.
Number head from Chicago	150,000	175,000
Number head from Omaha	196,000	233,500
Total from two points	346,000	408,500
Number head from Kansas City	510,432	392,262
Grand total, three points	856,432	800,762
Per cent of total from Kansas City	59.6	49.0

* * * * *

The Feeder Trade at Kansas City.

Shipments of stock cattle to the country in various months and years were as follows by cars:

	1896.	1895.	1894.	1893.	1892.
January	820	795	846	483	521
February	935	481	897	510	629
March	719	1,001	962	420	406
April	546	527	391	250	367
May	483	321	242	275	281
June	354	383	169	151	190
July	568	819	243	231	358
August	1,416	1,945	830	568	386
September	2,850	1,630	998	1,267	813
October	2,629	1,903	1,792	1,716	1,436
November	2,332	1,518	1,644	1,450	1,346
December	2,517	1,214	1,058	1,218	792
Year	16,169	12,537	10,072	8,539	7,525

59 Said stipulation, above mentioned, is in words and figures as follows:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

The United States of America, Plaintiff,
No. 2196. vs. In Equity.
J. C. Anderson et al, Defendants.

It is hereby stipulated and agreed between the parties hereto, that in making the transcript of the record for appeal in this cause only such portion of the "Red Book" attached to the affidavit of W. P. Neff as are contained on pages 4, 6, 8, 10, 11, 16 and 20, and included in brackets, be transcribed by the Clerk.

JOHN R. WALKER, U. S. Atty,
Attorney for Plaintiff.
R. E. BALL and
I. P. RYLAND,
Attorneys for Defendants.

On the 19th day of July, A. D. 1897, an order for a temporary injunction was filed in the above entitled cause.

Said order is in words and figures as follows:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

United States of America, Complainant,

vs.

J. C. Anderson, E. S. Aiken, J. H. Aiken, E. F. Anderson, W. M. Anderson, William B. Archer, John Brown, O. Bjorkman, W. B. Barnes, A. M. Byram, H. A. Benson,
60 A. A. Bidwell, Alex Bradford, A. H. Bayless, R. A. Brown, Ed. Brown, J. P. Butterfield, S. K. Chorn, W. M. Cole, F. B. Chapeze, J. F. Chapin, James D. Cox, H. A. Cubbison, M. Cavey, George W. Craycraft, E. S. Downs, J. R. Dillingham, M. Donegan, C. M. Davis, K. Donohue, F. J. Donohue, A. Diechman, W. H. Embry, Charles W. Embry, A. N. Eagan, S. H. Farrar, L. Frank, S. B. Floyd, Warner Floyd, H. L. Fetters, L. Frew, Charles Frew, William Fox, Henry Frank, J. W. Farrar, L. D. Graves, P. J. Gosnell, Jacob Gouch, L. F. Green, Philo S. Harris, W. P. Harris, P. H. Harris, A. Haggarty, Walter M. Hair, Balboa Henry, E. Harris, J. P. Holliway, J. R. Hawpe, J. M. Hail, Josiah Hale, George W. Irwin, Henry Jones, John T. Jett, I. M. Johnston, W. E. Johnston, H. M. Johnston, A. J. Judy, H. W. Jett, B. C. Jett, A. Judd, P. Kieney, John Keating, F. T. Kearns, T. S. Kennedy, J. W. Kellog, George H. Liddle, John S. Lindermann, J. N. Leach, John Lorimer, D. C. Lorimer, L. Levey, R. McMurtrie, George Macdonald, George J. Macdonald, John P. Miller, George W. Miller, Jerry McCarthy, Mike Miller, Otto C. Mason, R. L. Mitchell, B. J. Means, C. G. Manion, R. J. Monroe, P. Marx, J. W. Northern, L. Nathan, F. L. Orvis, C. Orear, William Priestman, A. R. Perkins, D. A. Painter, Charles Park, W. S. Park, Charles Philbrick, M. C. Ry-
61 land, J. S. Ryland, J. H. Rymell, Peter Stewart, V. A. Stephens, J. H. Spurlock, E. J. Sweeney, C. C. Sparks, C. Settle, M. C. Spence, John Shobe, W. A. Sanders, E. Storm, C. E. Seeley, C. W. Seeley, A. Swanson, W. E. Tower, W. C. Trower, James Trontman, James S. Thompson, J. R. Wilhite, Arthur Wilhite, John Wilhite, W. J. Woolrey, A. M. Winslaw, Jerry Wolf, Lester Wolf, A. Wolf, David Welsh, John L. Wilson, Henry Weill, Samuel Weill, J. A. Winstead, C. E. Wainscott, Thomas Welch, R. P. Yocum and W. H. Yancey, Defendants.

Decree of Temporary Injunction.

This cause having heretofore been heard and submitted on the bill of complaint, the arguments and briefs of the re-

spective counsel, on application for a temporary injunction, pendente lite, and the Court being now fully advised in the premises, doth find that on the bill and the affidavits submitted, the application for a temporary restraining order herein should be granted.

It is therefore ordered and decreed by the Court until the final hearing and decree on the merits, and until further order and decree of the Court, that the defendants herein, and each and every of them, be and they are hereby enjoined, either as associates in the said Traders' Live Stock Exchange or otherwise, from combining, by contract, agreement or understanding, expressed or implied, so as by their acts, conduct or words, to interfere with, hinder or impede others in shipping, trading or selling live stock, that is, cattle received from the states and territories at what is known as the Stock Yards at Kansas City, Missouri and shipped there from
62 other states and territories, for sale there or for further transportation through the states or to foreign markets. And the said defendants and each of them, are further enjoined from in anywise interfering with the freedom of access of any and all other traders and purchasers at said stock yards, and equal facilities therein, and thereto afforded by the Kansas City Stock Yards Exchange or Company, the same as employed by the defendants as members of the said Traders' Live Stock Exchange.

And it is further ordered and decreed that the said defendants, either collectively as such Traders' Live Stock Exchange, or through its executive committee, or otherwise, and each of them, be and they are hereby enjoined from enforcing or recognizing or acting under the following rules of the said Traders' Live Stock Exchange, to wit: Rules ten (10), eleven (11), twelve (12) and thirteen (13) and any and all amendments thereof, and from imposing or attempting to impose any fines or penalties upon any of the members of such Traders' Live Stock Exchange, for trading or offering to trade with any person or persons at said stock yards respecting the purchase and sale of any such cattle, or from discriminating in favor of any member of such Traders' Live Stock Exchange because of such membership; and especially from, in any manner, discriminating against any person trading at said stock yards in such cattle and from refusing by united or concerted action, or by word, persuasion, threat or other means, to deal or trade with persons who are not members of said association, because of such non-membership, or from dealing with any commission firm at said stock yards who may transact or attempt to transact business, in selling or trading in such cattle thereat with

any person not a member of said Traders' Live Stock Exchange; or in any manner from interfering with the right and freedom of any and all persons trading and desiring to trade in such cattle at such yards the same as if such Traders' association did not exist.

63 It is further ordered that the defendants have leave to make answer to the bill of complaint herein on or before the 20th day of August, next.

(Signed) JNO. F. PHILIPS,
U. S. Dist. Judge.

And thereafter, to wit on the 31st day of July, A. D. 1897 a petition for appeal was filed in the above entitled cause.

Said petition for appeal is in words and figures following:

In the Circuit Court of the United States, Western Division of the Western District of Missouri, at Kansas City.

United States, Complainants, Respondents,
No. 2196. vs. In Equity.

J. C. Anderson, E. S. Aiken, J. H. Aiken, J. V. Aiken, E. F. Anderson, W. M. Anderson, William B. Archer, John Brown, O. Bjorkman, W. B. Barnes, A. M. Byram, H. A. Benson, A. A. Bidwell, Alex Bradford, A. H. Bayless, R. A. Brown, Ed Brown, J. P. Butterfield, S. K. Chorn, W. M. Cole, F. B. Chapeze, J. F. Chapin, James D. Cox, H. A. Cubbison, M. Cavey, George W. Craycraft, E. S. Downs, J. R. Dillingham, M. Donegan, C. M. Davis, K. Donohue, F. J. Donohue, A. Deichman, W. H. Embry, Charles W. Embry, A. N. Eagan, H. S. Farrar, L. Frank, S. B. Floyd, Warner Floyd, H. L. Fetters, L. Frew, Charles Frew, William Fox, Henry Frank, J. W. Farrar, L. D. Graves, P. J. Gosnell, Jacob Gouch, L. F. Green, Philo S. Harris, W. P. Harris, P. H. Harris, A.
64 Haggerty, Walter M. Hair, Balboa Henry, E. Harris, J. P. Holliway, J. R. Hawpe, J. M. Hail, Josiah Hale, George W. Irwin, Henry Jones, John T. Jett, I. M. Johnston, W. E. Johnston, H. M. Johnston, A. J. Judy, W. H. Jett, B. C. Jett, A. Judd, P. Kieney, John Keating; F. T. Kearns, T. S. Kennedy, J. W. Kellog, George H. Liddle, John S. Lindermann, J. N. Leach, John Lorimer, D. C. Lorimer, W. C. Lorimer, L. Levey, R. McMurtrie, George Macdonald, George J. Macdonald, John P. Miller, George W. Miller, Jerry McCarthy, Mike Miller, Otto C. Mason, R. L. Mitchell, B. J. Means, C. G. Manion, R. J. Monroe, P. Marx, J. W. Northern, L. Nathan, F. L. Orvis, C. Orear, William Priestman, A. R. Perkins, D. A. Painter, Charles Park, W. S. Park, Charles Phil-

brick, M. C. Ryland, J. S. Ryland, J. H. Rymell, Peter Stewart, V. A. Stephens, J. H. Spurlock, E. J. Sweeney, C. C. Sparks, C. Settle, M. C. Spence, John Shobe, Andy Shobe, W. A. Sanders, E. Storm, C. E. Seeley, C. W. Seeley, A. Swanson, W. E. Tower, W. C. Trower, James Troutman, James S. Thompson, J. R. Wilhite, Arthur Wilhite, John Wilhite, W. J. Woolrey, A. M. Winslow, Jerry Wolf, Lester Wolf, A. Wolf, David Welsh, John L. Wilson, Henry Weill, Samuel Weill, J. A. Winstead, C. E. Wainscott, R. P. Yocum, W. H. Yancy, Defendants, Appellants.

65 Now come the above named defendants, J. C. Anderson, E. S. Aiken, J. H. Aiken, J. V. Aiken, E. F. Anderson, W. M. Anderson, William B. Archer, John Brown, O. Bjorkman, W. B. Barnes, A. M. Byram, H. A. Benson, A. A. Bidwell, Alex Bradford, A. H. Bayless, R. A. Brown, Ed Brown, J. P. Butterfield, S. K. Chorn, W. M. Cole, F. B. Chapeze, J. F. Chapin, James D Cox, H. A. Cubbison, M. Cavey, George W. Craycraft, E. S. Downs, J. R. Dillingham, M. Donegan, C. M. Davis, K. Donohue F. J. Donohue, A. Deichman, W. H. Embry, Charles W. Embry, A. N. Egan, H. S. Farrar, L. Frank, S. B. Floyd, Warner Floyd, H. L. Fetters, L. Frew, Charles Frew, William Fox, Henry Frank, J. W. Farrar, L. D. Graves, P. J. Gosnell, Jacob Gouch, L. F. Green, Philo S. Harris, W. P. Harris, P. H. Harris, A. Haggarty, Walter M. Hair, Balboa Henry, E. Harris, J. P. Holliway, J. R. Hawpe, J. M. Hale, Josiah Hale, George W. Irwin, Henry Jones, John T. Jett, I. M. Johnston, W. E. Johnston, H. M. Johnston, A. J. Judy, H. W. Jett, B. C. Jett, A. Judd, P. Kieney, John Keating, F. T. Kearnes, T. S. Kennedy, J. W. Kellogg, George H. Liddle, John S. Lindermann, J. N. Leach, John Lorimer, D. C. Lorimer, W. C. Lorimer, L. Levey, R. McMurtrie, George Macdonald, George J. Macdonald, John P. Miller, George W. Miller, Jerry McCarthy, Mike Miller, Otto C. Mason, R. L. Mitchell, B. J. Means, C. G. Manion, R. J. Monroe, P. Marx, J. W. Northern, L. Nathan, F. L. Orvis, C. Orear, William Priestman, A. R. Perkins, D. A. Painter, Charles Park, W. S. Park, Charles Philbrick, M. C. Ryland, J. S. Ryland, J. H. Rymell, Peter Stewart, V. A. Stephens, J. H. Spurlock, E. J. Sweeney, C. C. Sparks, C. Settle, M. C. Spence, John Shobe, Andy Shobe, W. A. Sanders, E. Storm, C. E. Seeley, C. W. Seeley, A. Swansen, W. E. Tower, W. C. Trower, James Troutman, James S. Thompson, J. R. Wilhite, Arthur Wilhite, John Wilhite, W. J. Woolrey, A. M. Winslow, Jerry Wolf, Lester Wolf, A. Wolf, David Welsh, John L. Wilson, Henry Weill, Samuel Weill, J. A. Winstead, C. E. Wainscott, R. P. Yocum, W. H. Yancey, and conceiving themselves aggrieved by the order and

66 decree for a temporary injunction, pendente lite, entered on the 19th day of July, 1897, in the above entitled proceeding, do hereby appeal from said order and decree to the Circuit Court of Appeals of the United States in the Eighth Circuit, and they pray that this, their appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the said Circuit Court of Appeals of the United States.

R. E. BALL,
I. P. RYLAND,

Attorneys for said defendants and appellants, 601 & 602 N. Y. Life Building, Kansas City, Missouri.

On the same day, to wit, on the 31st day of July, A. D. 1897 an assignment of errors was filed in the above entitled cause, which said assignment of errors is in words and figures as follows, to wit:

In the Circuit Court of the United States, Western Division of the Western District of Missouri, at Kansas City.

United States.... Complainants, Respondents,
No. 2196. vs. In Equity.

J. C. Anderson, E. S. Aiken, J. H. Aiken, E. F. Anderson, W. M. Anderson, William B. Archer, John Brown, O. Bjorkman, W. B. Barnes, A. M. Byram, H. A. Benson, A. A. Bidwell, Alex Bradford, A. H. Bayless, R. A. Brown, Ed. Brown, J. P. Butterfield, S. K. Chorn, W. M. Cole, F. B. Chapeze, J. F. Chapin, James D. Cox, H. A. Cubbison, M. Cavey, George W. Craycraft, E. S. Downs, J. R. Dillingham, M. Donegan, C. M. Davis, K.
67 Donohue, F. J. Donohue, A. Deichman, W. H. Embry, Charles W. Embry, A. N. Egan, H. S. Farrar, L. Frank, S. B. Floyd, Warner Floyd, H. L. Fetters, L. Frew, Charles Frew, William Fox, Henry Frank, J. W. Farrar, L. D. Graves, P. J. Gosnell, Jacob Gouch, L. F. Green, Philo S. Harris, W. P. Harris, P. H. Harris, A. Haggarty, Walter M. Hair, Balboa Henry, E. Harris, J. P. Holliway, J. R. Hawpe, J. M. Hail, Josiah Hale, George W. Irwin, Henry Jones, John T. Jett, I. M. Johnston, W. E. Johnston, H. M. Johnston, A. J. Judy, H. W. Jett, B. C. Jett, A. Judd, P. Kieney, John Keating, F. T. Kearns, T. S. Kennedy, J. W. Kellog, George H. Liddle, John S. Linderman, J. N. Leach, John Lorimer, D. C. Lorimer, W. C. Lorimer, L. Levey, R. McMurtrie, George Macdonald, George J. Macdonald, John P. Miller, George W. Miller, Jerry McCarthy, Mike Miller, Otto C. Mason, R. L. Mitchell, B. J. Means, C. G. Man-

ion, R. J. Monroe, P. Marx, J. W. Northern, L. Nathan, F. L. Orvis, C. Orear, William Priestman, A. R. Perkins, D. A. Painter, Charles Park, W. S. Park, Charles Philbrick, M. C. Ryland, J. S. Ryland, J. H. Rymell, Peter Stewart, V. A. Stephens, J. H. Spurlock, E. J. Sweeney, C. C. Sparks, C. Settle, M. C. Spence, John
68 Shobe, Andy Shobe, W. A. Sanders, E. Storm, C. E. Seeley, C. W. Seeley, A. Swansen, W. E. Tower, W. C. Trower, James Troutman, James S. Thompson, J. R. Wilhite, Arthur Wilhite, John Wilhite, W. J. Woolrey, A. M. Winslow, Jerry Wolf, Lester Wolf, A. Wolf, David Welsh, John L. Wilson, Henry Weill, Samuel Weill, J. A. Winstead, C. E. Wainscott, R. P. Yocum, W. H. Yancy, Defendants, Appellants.

ASSIGNMENT OF ERRORS.

Afterward, to wit, on the 31st day of July, in the year of our Lord, 1897, at the April Term of Court, 1897, come the said defendants by R. E. Ball and I. P. Ryland, their attorneys, and say that in the record and proceedings in the above entitled cause there is manifest error in this to wit:

I.

That the matters charged in the bill of complaint against defendants do not constitute any offense under the common law or any Statute of the United States.

II.

That the acts charged in the bill of complaint do not constitute any offense against the Statute of the United States of July 2nd, 1890.

III.

That the Circuit Court erred in granting a decree for a temporary injunction, because the matters charged in the bill of complaint fail to show that defendants were engaged in inter-state commerce, and the matters and acts charged, if true, show that defendants are not engaged in inter-state commerce.

69 IV.

That the Circuit Court erred in granting said decree because the act of July 2nd, 1890, as interpreted by the Circuit Court would be violative of Article I of Amendments to the Constitution of the United States forbidding Congress to make any law "abridging the freedom of speech."

V.

That the Circuit Court erred in granting said decree, because the Act of July 2nd, 1890, as interpreted by said Court

would violate Article V of Amendments to the Constitution of the United States forbidding that any person should be deprived of "liberty or property without due process of law."

VI.

That the Circuit Court erred in granting said decree, because under the averments of the bill and the affidavits filed, the acts of the defendants charged do not constitute any restraint of trade between the states or with foreign nations, within the meaning of the Act of July 2nd, 1890.

VII.

That the Circuit Court erred in granting a preliminary decree enjoining defendants "from combining by contract, agreement or understanding, expressed or implied, so as by their acts, conduct or words to interfere with, hinder or impede others in shipping, trading or selling live stock, that is, cattle received from the states and territories at what is known as the Stock Yards at Kansas City, Missouri," because (a), no averment of the bill or the affidavits shows or claims any contract, agreement or understanding between defendants to hinder or impede others in shipping cattle to or from said market; (b), "trading or selling live stock" on said
70 market is not interstate commerce, and no act of defendants charged in the bill or shown by the affidavits constitutes any restraint of such commerce within the meaning of the Act of July 2nd, 1890; (c), the "conduct or words" of defendants, as charged in the bill and affidavits, are only such as defendants might lawfully use in conducting a purely private and local business, and do not constitute any infringement of the Act of July 2nd 1890; (d), the averments of the bill and affidavits fail to show that defendants or any of them, have anything to do with cattle shipped to the Kansas City market "for further transportation through the states or to foreign markets."

VIII.

That the Circuit Court erred in enjoining defendants "from in anywise interfering with the freedom of access of any and all other traders and purchasers at said Stock Yards" because (a), it is not averred in the bill nor in any affidavit filed, that such freedom of access is interfered with; (b), the acts of defendants charged to have been committed do not interfere with such freedom of access but leave parties trading in said market to their free choice of dealing with members of the Exchange or with non-members; (c), if the exercise of such free choice on the part of the dealers resulted, as charged, in

impeding others in their private business of buying and selling on said market, such result would not be a violation of the act of July 2nd, 1890, or in anywise tend to hinder or restrain interstate commerce.

IX.

That the Circuit Court erred in enjoining defendants and each of them "from enforcing or recognizing or acting under" Rule 10 of said Traders' Live Stock Exchange, providing that "the Exchange will not recognize any yard trader unless he is a member," because (a), defendants owe no public
71 duty to recognize any yard trader, and the Exchange and its members, being an association of private traders, have the right, under the Constitution and laws, to recognize whom they please and may "select their patrons" and may wholly or partly "cease to do any business when their choice lies in that direction;" (b), the "enforcing or recognizing or acting under" said rule does not constitute any restraint of interstate commerce within the meaning of the Act of July 2nd, 1890.

X.

That the Circuit Court erred in enjoining defendants "from enforcing or recognizing or acting under" Rule 11, providing that where "two or more parties are trading as partners, each and all of them shall be members of the Exchange," because (a), this voluntary association of private traders have the right to prescribe such conditions of membership as they see fit, and as may be freely acceded to by those joining the organization; (b), neither the bill nor affidavits charge or show any threats or violence or conduct on the part of the defendants interfering with or abridging the right of any trader to become a member or not as his choice may dictate; (c), the "enforcing or recognizing or acting under" said rule constitutes no violation of the Statutes and does not restrain commerce between the states or with foreign nations.

XI.

That the Circuit Court ererd in enjoining defendants "from enforcing or recognizing or acting under" Rule 12, providing that only members should be employed by members to buy or sell cattle because (a) defendants being private traders, each on his own account, have the right, under the Constitution and Laws of the United States, to employ anybody or nobody, for any reason or no reason, as they may see proper; (b), being voluntarily associated, defendants have a right to agree to employ only members and in so agreeing they do not
72 violate the Statute nor in anywise restrain interstate commerce.

XII.

That the Circuit Court erred in enjoining defendants "from enforcing or recognizing or acting under" Rule 13, forbidding any member from paying any sum of money as a fee to any agent of a seller to make a sale to such member, or to any agent of a purchaser to make a purchase, from such member, because (a), defendants have a right to agree voluntarily that they will not bribe the agent of an owner to make a sale to them, nor bribe the agent of a purchaser to make a purchase from them; and (b), the enforcement of this rule against bribery is lawful and not in violation of the statute or in restraint of interstate commerce.

XIII.

That the Circuit Court erred in enjoining defendants "from enforcing or recognizing or acting under" said rules, because said rules are private regulations, voluntarily agreed to, with which the public has no concern, and their enforcement or recognition or action thereunder by defendants directly affect the defendants only, and do not directly or indirectly restrain interstate commerce.

XIV.

That the Circuit Court erred in enjoining defendants "from discriminating in favor of any member of such Traders' Live Stock Exchange because of such membership," for the reasons that (a), the bill does not charge any such discrimination; (b), if such act of discrimination by a private trader is lawful, when done for any reason, it would not be a crime where the act was the same but the reason was "because of such membership;" (c), defendants have a right as private traders to make discriminations in their business, even "unjust discriminations" and can favor one another if they see proper
73 to do so; and (d) such discrimination does not restrain or tend to restrain interstate commerce within the meaning of the Statute.

XV.

That the Circuit Court erred in enjoining defendants "especially from in any manner discriminating against any person trading at said stock yards in such cattle and from refusing by united or concerted action, or by words, persuasion, threat or other means, to deal or trade with persons who are not members of said Association, because of such non-membership" and from refusing to deal with commission firms who deal with non-members because (a), "the mere private trader may sell to whom he pleases," "he may select his patrons," and "may make such discrimination in his business as he chooses" and may even "make unjust discriminations;" (b), no threat is charged in the bill or shown; (c), no "persuasion or

other means" are charged in the bill or shown by the affidavits to have been used, except such as defendants had a perfect right under the Constitution and laws to employ; (d), defendants have the right under the Constitution and laws to cease dealing with any person for any reason satisfactory to defendants; (e), defendants, as private traders, owe no duty to any person to deal with such person, and cannot lawfully be compelled to so deal, no matter what their reason for refusing to so deal; (f), refusal to deal by a private trader is not a crime, and is not made so by any particular reason for such action; (g), the mere "refusing by united or concerted action or by words or persuasion" to deal with any person is not a violation of the Act of July 2nd, 1890, does not constitute a restraint of interstate commerce, and does not interfere with or restrain any commerce; (h), defendants, severally and together, have the right to "cease to do business" with any or all of the cattle salesmen at the stock yards "when their choice lies in that direction."

74 R. E. BALL,
I. P. RYLAND,
Attorneys for Appellants, 601, 602, New York Life Bldg, Kansas City, Missouri.

And thereafter, to wit, on the 4th day of August, A. D. 1897, an order allowing appeal was filed and entered of record in the above entitled cause, said order being in words and figures as follows, to wit:

"And now, to wit, on the 2nd day of August, 1897, it is ordered that Appellants file with the Clerk of said Circuit Court a bond to the United States, in the sum of $1,000.00 to answer all costs if they shall fail to sustain their appeal; and such bond, with sufficient sureties, being now duly presented approved by the Court and filed, it is further ordered that the appeal of defendants be allowed as prayed for.

It is further ordered that the taking of testimony in this cause be stayed until the determination of this appeal.

(Signed) JNO. F. PHILLIPS.

Said bond for appeal is in words and figures as follows:

Know all men by these presents, That we, S. H. Farrar, J. H. Aikin, Wm. P. Voorhees, R. W. Ryan, J. N. Irwin, and E. S. Downs, are held and firmly bound unto the United States in the full and just sum of one thousand dollars ($1,000.00) to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of July, in the year of our Lord, one thousand eight hundred and ninety-seven.

75 Whereas, lately, at the May Term of the Circuit Court of the United States, of the Western Division of the Western District of Missouri, at Kansas City, in a suit pending in said Court, between United States, as complainants, and J. C. Anderson et al. as defendants, No. 2196, a decree and order for a temporary injunction was rendered against the said defendants and the said defendants have petitioned for and obtained an order of appeal in the said Court, to reverse the decree and order for a temporary injunction in the aforesaid suit, and a citation directed to the said United States, citing and admonishing them to be and appear in the United States Circuit Court of Appeals, for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such: That if the said defendants and appellants shall prosecute said appeal to effect, and answer all damages and costs, if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

S. H. FARRAR, [Seal]
J. H. AIKINS, [Seal]
WM. P. VOORHEES, [Seal]
R. W. RYAN, [Seal]
J. N. IRWIN, [Seal]
E. S. DOWNS. [Seal]

Approved.
(Signed) JNO. F. PHILIPS, Judge.

76 United States of America, Set.

I, Adelaide Utter, Clerk of the Circuit Court of the United States, for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a true copy of the record, assignment of errors and all proceedings in the case entitled United States of America vs. J. C. Anderson et al., as fully as the same remains on file and of record in my office.

Seal of the United States Circuit Court for the Western District of Missouri Western Division

Witness my hand as Clerk and the seal of said Court. Done at office in Kansas City, Missouri, this 12th day of August, A. D. 1897.

ADELAIDE UTTER, Clerk.

Filed Aug. 23, 1897. John D. Jordan, Clerk.

77 In the Circuit Court of the United States, Western Division of the Western District of Missouri.

United States, Complainant, Appellee,

vs.

J. C. Anderson, E. S. Aiken, J. H. Aiken, J. V. Aiken, E. F. Anderson, W. M. Anderson, William B. Archer, John Brown, O. Bjorkman, W. B. Barnes, A. M. Byram, H. A. Benson, A. A. Bidwell, Alex Bradford, A. H. Bayless, R. A. Brown, Ed Brown, J. P. Butterfield, S. K. Chorn, W. M. Cole, F. B. Chapeze, J. F. Chapin, James D. Cox, H. A. Cubbison, M. Cavey, George W. Craycraft, E. S. Downs, J. R. Dillingham, M. Donegan, C. M. Davis, K. Donohue, F. J. Donohue, A. Deichman, W. H. Embry, Charles W. Embry, A. N. Egan, H. S. Farrar, L. Frank, S. B. Floyd, Warner Floyd, H. L. Fetters, L. Frew, Charles Frew, William Fox, Henry Frank, J. W. Farrar, L. D. Graves, P. J. Gosnell, Jacob Gouch, L. F. Green, Philo S. Harris, W. P. Harris, P. H. Harris, A. Haggarty, Walter M. Hair, Balboa Henry, E. Harris, J. P. Holliway, J. R. Hawpe, J. M. Hail, Josiah Hale, George W. Irwin, Henry Jones, John T. Jett, I. M. Johnston, W. E. Johnston, H. M. Johnston, A. J. Judy, H. W. Jett, B. C. Jett, A. Judd, P. Kieney, John Keating, F. T. Kearns, T. S. Kennedy, J. W. Kellogg, George H. Liddle, John S. Lindermann, J. N. Leach, John Lorimer, D. C. Lorimer, W. C. Lorimer, L. Levey, R. McMurtrie, George Macdonald, George J. Macdonald, John P. Miller, George W. Miller, Jerry McCarty, Mike Miller, Otto C. Mason, R. L. Mitchell, B. J. Means, C. G. Manion, R. J. Monroe, P. Marx, J. W. Northern, L. Nathan, F. L. Orvis, C. Orear, William Priestman, A. R. Perkins, D. A. Painter, Charles Park, W. S. Park, Charles Philbrick, M. C. Ryland, J. S. Ryland, J. H. Rymell, Peter Stewart, V. A. Stephens, J. H. Spurlock, E. J. Sweeney, C. C. Sparks, C. Settle, M. C. Spence, John Shobe, Andy Shobe, W. A. Sanders, E. Storm, C. E. Seeley, C. W. Seeley, A. Swansen, W. E. Tower, W. C. Trower, James Troutman, James S. Thompson, J. R. Wilhite, Arthur Wilhite, John Wilhite, W. J. Woolrey, A. M. Winslow, Jerry Wolf, Lester Wolf, A. Wolf, David Welsh, John L. Wilson, Henry Weill, Samuel Weill, J. A. Winstead, C. E. Wainscott, R. P. Yocum, W. H. Yency, Defendants, Appellants.

Now come the defendants, appellants and pray that the said order and decree for a preliminary injunction of
78 the said Circuit Court of the United States, for the

55 western division of the western district of Missouri, for the errors assigned, be reversed, and that the said circuit court of the United States be ordered to enter an order dismissing the bill of complaint.

R. E. BALL,
I. P. RYLAND,
Attorneys for Appellants, New York Life Building, Kansas City, Missouri.

It is stipulated and agreed between appellants and appellee that the foregoing prayer for reversal may be filed in the circuit court of the United States for the western division of the western district of Missouri, and that the transcript of the record may be amended by adding thereto a duly certified copy of said prayer, and that such copy when so certified to the United States circuit court of appeals, shall be added to said transcript with like effect, as if same had been embraced in the original transcript.

R. E. BALL,
I. P. RYLAND,
Attorneys for Appellants.
JOHN R. WALKER,
United States District Attorney for the Western Division of the Western District of Missouri, Attorney for Appellee, United States.

UNITED STATES OF AMERICA, *set:*

I, Adelaide Utter, clerk of the circuit court of the United States for the western division of the western district of Missouri, do hereby certify that the foregoing is a true copy of the prayer for reversal and stipulation in the cause therein named, as fully as the same appears in my office.

Seal of the United States Circuit Court for the Western District of Missouri, Western Division.

Witness my hand as clerk, and the seal of said court. Done at office, in Kansas City, Missouri, this 26th day of August, A. D. 1897.
ADELAIDE UTTER, *Clerk.*

No. 989. No. 2196. United States circuit court, western division of the western district of Missouri. United States, plaintiff, against J. C. Anderson *et al.*, defendants. Certified copy of the prayer for reversal and stipulation in the above-entitled cause. Filed Aug. 27, 1897. John D. Jordan, clerk.

56 And on the twenty-fourth day of August, A. D. 1897, an appearance of counsel for the appellants was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

J. C. ANDERSON *et al.*, Appellants,
vs.
THE UNITED STATES OF AMERICA. } No. 989.

The clerk will enter my appearance as counsel for the appellants.
R. E. BALL.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1897. No. 989. J. C. Anderson *et al.*, appellants, *vs.* United States of America. Appearance. Filed Aug. 24, 1897. John D. Jordan, clerk. R. E. Ball, counsel for appellants.

And on the twenty-seventh day of August, A. D. 1897, an appearance of counsel for the appellee was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

J. C. ANDERSON *et al.*, Appellants,
vs.
UNITED STATES OF AMERICA. } No. 989.

The clerk will enter my appearance as counsel for the appellee.
JOHN R. WALKER,
U. S. Att'y, West. Dist. of Mo.

57 Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1897. No. 989. J. C. Anderson *et al.*, appellants, *vs.* United States of America. Appearance. Filed Aug. 27, 1897. John D. Jordan, clerk. John R. Walker, U. S. att'y, Kansas City, Mo., counsel for appellee.

And on the fourth day of September, A. D. 1897, a motion to advance the cause and consent thereto was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following, to wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

J. C. ANDERSON *et al.*, Appellants,
vs.
UNITED STATES OF AMERICA, Appellee. } No. 989.

Now come the appellants in the above-entitled cause, by R. E. Ball and I. P. Ryland, their attorneys, and show to the court that the appeal herein is from an injunction granted by an interlocutory order of the circuit court of the United States for the western division of the western district of Missouri.

Wherefore the appellants move the court to make an order ad-

vancing said cause on the docket and setting the same for hearing in accordance with the provisions of section 7 of the act establishing circuit courts of appeals, approved March 3rd, 1891, and amendments thereto.

R. E. BALL,
I. P. RYLAND,
Attorneys for Appellants.

I agree that the foregoing motion may be sustained and the cause set for hearing at the session of the court, at St. Paul, beginning September 6th, 1897.

JOHN R. WALKER,
District Attorney for the Western District of Missouri,
Attorney for United States, Appellee.

58 Endorsed: 989. J. C. Anderson *et al.*, appellants, *vs.* United States of America, appellee. Appellants' motion to advance cause and consent of counsel for appellee. Filed Sep. 4, 1897. John D. Jordan, clerk.

And on the fifteenth day of September, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an order advancing said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

WEDNESDAY, *September* 15, 1897.

J. C. ANDERSON *et al.*, Appellants,
vs.
THE UNITED STATES OF AMERICA. } No. 989.

Appeal from the circuit court of the United States for the western district of Missouri.

This cause came on this day to be heard upon the motion filed by counsel for appellants to advance this cause on the docket and to assign the same for hearing during the present term of this court and upon the consent to such order, made in writing, by counsel for appellee.

On consideration whereof it is now here ordered by this court that said motion be granted, and it is ordered that this cause be, and the same is hereby, advanced to the docket of the present term and is assigned for hearing on Tuesday, October 5, 1897, after the cases now assigned for that day.

And on the twenty-fourth day of September, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an order to certify certain questions to the Supreme Court of the United States in the words and figures following, to wit:

59 United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

FRIDAY, *September* 24, 1897.

J. C. ANDERSON and Others, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee. } No. 989.

Appeal from the circuit court of the United States for the western district of Missouri.

In this cause it is now here ordered that certain questions arising upon the record be, and they are hereby, ordered to be certified to the Supreme Court of the United States under the provisions of section six of the act of March 3, 1891, for the instruction of the said Supreme Court upon said questions.

The said certificate is in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

J. C. ANDERSON and Others, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee. } No. 989.

Appeal from the circuit court of the United States for the western district of Missouri.

The United States circuit court of appeals for the eighth circuit, sitting in the city of St. Paul, Minnesota, on the 24th day of September, 1897, hereby certifies that from the record on file in said court, in case No. 989, entitled J. C. Anderson and others, appellants, against The United States of America, appellee, and which said cause is now pending and undetermined in said court upon an appeal duly taken from an interlocutory order of injunction made in said cause by the circuit court of the United States for the western division of the western district of Missouri, the following facts appear, to wit:

That the appellants in said cause, one hundred and forty-three in number, who were the defendants in the circuit court, and against whom an order of injunction was entered by said circuit court, are each and all members of a voluntary, unincorporated asso-

60 ciation known and designated as the "Traders' Live Stock Exchange;" that the government of said "Traders' Live Stock Exchange" is vested in a board of eight directors, all of whom are members of said exchange; that in addition to said board of directors the officers of said exchange are a president, a vice-president, a secretary, and a treasurer; that the business of said "Traders' Live Stock Exchange" is carried on and conducted by such board of directors and officers with the consent, knowledge, and approbation of the appellants, all of whom are members of said Traders' Live Stock Exchange, at the Kansas City

stock yards, situated in Kansas City, in the State of Missouri, and in the city of Kansas City, in the State of Kansas, and in a building owned by the Kansas City Stock Yards Company, which said building is so located that one-half thereof is situated in the State of Missouri and the other one-half thereof in the State of Kansas; that of the above-named appellants about one-half thereof have offices and transact business in said stock yards and in said building within the State of Kansas, and the other one-half of said defendants have offices and transact business at said building and stock yards in the State of Missouri.

That the Kansas City Stock Yards Company is a corporation which owns, controls, operates, and manages the Kansas City stock yards; that said yards are located in Jackson county, Missouri, and in Wyandotte county, Kansas, being located upon both sides of the State line between the States of Kansas and Missouri, and said stock yards consist of the yards, pens, chutes, railway tracks, sheds, scales, buildings, and other means and appliances for receiving, yarding, feeding, selling, purchasing, and shipping cattle, hogs, and other live stock; that the board of directors and officers of said live stock exchange, all of whom are parties to this cause, transact its business partially in the State of Missouri and partially in the State of Kansas.

That the Kansas City stock yards is a public market, and is one of the largest live-stock markets in the world; that a vast number of cattle, hogs, and other animals are received annually at said stock yards; that the animals so received are shipped from numerous States and Territories; that large numbers of animals received at said stock yards are for sale upon said market, and many
61 of such animals are sold at said yards to buyers who reside in other States and Territories, and who reship said animals to said other States and Territories, and that a large number of animals which are received at said stock yards are shipped to Chicago and other markets in the East; that said animals so received at said stock yards are shipped thereto under contracts whereby the shipper is permitted to unload said stock at the Kansas City stock yards, rest, water, and feed the same, and is accorded the privilege of selling said animals upon the Kansas City market if the prices prevailing at the time justify such sale; that many head of animals so shipped, as aforesaid, are sold upon the Kansas City market aforesaid; that a large proportion thereof, consisting of cattle, hogs, and sheep, are sold to packing-houses situated in Kansas City, Missouri, and in Kansas City, Kansas, and large numbers are sold for shipment to various other markets, particularly for shipment to Chicago, St. Louis, and New York markets, and large numbers thereof are sold for export to London and other European markets.

That The United States of America, the appellee, has employed and stationed at the Kansas City stock yards its inspectors who inspect the live stock so received at said yards.

That in The course of business at the said Kansas City stock yards in the buying, selling, handling, and reshipment of cattle the said cattle are moved and shifted from that part of said stock yards

situated in the State of Kansas to that part of the stock yards located in the State of Missouri, and *vice versa*, according to the convenience of said stock yards company; that in the sale and reshipment of stock from said stock yards a portion are sold and shipped from the State of Kansas and a portion from the State of Missouri, the loading pens and sheds of said yards being situated in both said States and contiguous to each other; that said Kansas City stock yards afford to owners, shippers, and dealers in live stock the only available means at that place for handling, selling, and reshipping live stock and the only available market and place for those purposes within a distance of two hundred miles to the north, south, and east of Kansas City and for more than one thousand miles to the west thereof, and that by reason thereof said Kansas City stock
62 yards is the only available public market for the purchase and sale of live stock for a large extent of territory, constituting a portion of the States and Territories of the United States, and the only available means for the interchange of traffic in live stock between the States and Territories contiguous, as aforesaid, to Kansas City, Missouri.

That the appellants in this cause, who were the defendants in the circuit court, and each one of them and divers other persons, were, prior to the month of March, 1897, engaged as live-stock dealers at the said Kansas City stock yards—that is to say, in the business of buying upon the market, reselling upon the market, and reshipping to other markets in other States the cattle so as aforesaid received at the Kansas City stock yards from surrounding States and Territories; that it is and for years has been the daily custom and practice of said appellants and their associates and other persons in the conduct of their business to purchase and sell live stock in the State of Missouri which is at the time located at said stock yards in pens in the State of Kansas, and to purchase and sell stock in the State of Kansas which is at the time located at said stock yards in pens in the State of Missouri, and deliveries of such stock are made on such purchases and sales from the State of Kansas to purchasers in the State of Missouri, and deliveries of such stock are also daily made on such purchases and sales from the State of Missouri to purchasers in the State of Kansas.

That all the live stock shipped to and received at the Kansas City stock yards as aforesaid is consigned to commission merchants at said yards, which commission merchants take charge of said stock when it is received at said yards; that they sell said stock to the packing-houses located at Kansas City, Missouri, and Kansas City, Kansas, and they sell large numbers of cattle to the appellants herein and to other persons, who resell and reship the same; that the appellants herein to the number of one hundred and forty-three have agreed, combined, and conspired to prevent all other persons than the members of said Traders' Live Stock Exchange from buying and selling cattle upon the Kansas City market at the said Kansas City stock yards; that under the terms of said agreement commission firms, persons, and corporations to whom cattle are

consigned at Kansas City as aforesaid are not permitted and
63 cannot sell or dispose of the cattle so consigned to them to any buyer or speculator at said Kansas City stock yards unless said buyer is a member of the Traders' Live Stock Exchange; that said appellants and each of them refuse to purchase cattle or in any manner engage or deal with or buy from any commission merchant who sells or purchases cattle from any dealer at said stock yards who is not a member of the said Traders' Live Stock Exchange, and that by means of the aforesaid agreement, combination, and conspiracy the traffic in cattle at said Kansas City stock yards is interfered with and hindered to such extent as to entail extra expense and loss to the owners and consignors of the cattle.

That in pursuance of the agreement and combination aforesaid the officers and board of directors of said Traders' Live Stock Exchange have, within the three months preceding June 7, 1897, imposed fines upon certain members of said live-stock exchange who had traded with persons or speculators upon the market at Kansas City, Missouri, and Kansas City, Kansas, who were not members of said live-stock exchange, and within the same period have imposed fines upon members of said live-stock exchange who have traded with commission firms at said Kansas City stock yards, which commission firms had bought from and sold cattle to speculators and other persons upon said market who were not members of said live-stock exchange.

That in associating themselves together under the name of the Traders' Live Stock Exchange the purpose and object of the appellants was and is to prevent and restrain all other persons who are not members of said Traders' Live Stock Exchange from prosecuting or carrying on the business of buying and selling live stock at said Kansas City stock yards, in which the appellants are engaged, and that the further aim and object had in view by the appellants in organizing the Traders' Live Stock Exchange was and is to prevent the sale by any commission firm at said Kansas City stock yards of any cattle to any person who might be a buyer or speculator upon the market unless he happens to be a member of said live-stock exchange.

And said United States circuit court of appeals further certifies
that to the end that it may properly decide the questions
64 arising in said cause and presented by the record and assignment of errors therein, said court desires the instruction of the Supreme Court upon the following questions and propositions of law arising upon said record, to wit:

First. Do the facts above recited show that the appellants have violated any of the provisions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies"?

Second. Do the acts done by the appellants and above recited show that the appellants are amenable to the process of injunction issued at the instance of the United States under and by virtue of the provisions of section four of the act approved July 2, 1890, entitled

"An act to protect trade and commerce against unlawful restraints and monopolies"?

Third. Is the aforesaid agreement and conspiracy between the appellants, as members of the Traders' Live Stock Exchange, to prevent all persons other than members of said exchange from buying and selling cattle and other live stock upon the Kansas City market at said stock yards in Kansas City, Missouri, and Kansas City, Kansas, a contract, combination, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, such as falls within the provisions and inhibitions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies"?

In witness whereof the undersigned judges holding the said United States circuit court of appeals for the eighth circuit have hereunto set their hands this 24th day of September, A. D. 1897, at St. Paul, Minnesota, and ordered and directed that the foregoing certificate be filed in said circuit court of appeals, and by the clerk of said court duly forwarded to the Supreme Court of the United States.

(Signed) DAVID J. BREWER,
Circuit Justice.

(Signed) WALTER H. SANBORN,
Circuit Judge.

(Signed) AMOS M. THAYER,
Circuit Judge.

United States Circuit Court of Appeals for the Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the fore-
65 going certificate in the case of J. C. Anderson *et al.*, appellants, *vs.* The United States of America, No. 989, May term, 1897, was duly filed and entered of record in my office by order of said court, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I hereunto subscribe my name and affix the seal of the said United States circuit court of appeals for the eighth circuit, at the city of St. Paul, Minnesota, this twenty-fourth day of September, A. D. 1897.

[SEAL.] (Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed:) Filed Sep. 24, 1897. John D. Jordan, clerk.

United States Circuit Court of Appeals for the Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing sixty-five pages contain full, true, and complete copies of all the

pleadings, proceedings, and record entries in the case of J. C. Anderson and others, appellants, *vs.* The United States of America, No. 989, May term, 1897, as the same remain on file and of record in my office.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this ninth day of November, A. D. 1897.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed on cover: Case No. 16,692. Supreme Court U. S., October term, 1897. Term No., 479. J. C. Anderson *et al.*, appellants, *vs.* The United States. Writ of certiorari and return. Office Supreme Court U. S. Filed Nov. 12, 1897. James H. McKenney, clerk.

479. 181.

Filed Oct. 20, 1897.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 479.

J. C. ANDERSON ET AL., APPELLANTS,

vs.

THE UNITED STATES, APPELLEE.

Motion by Appellants for an Order on the Circuit Court of Appeals of the Eighth Circuit to Transmit the Entire Record in the Case.

JOHN L. PEAK AND
R. E. BALL,
Attorneys for Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10-20-'97

IN THE

Supreme Court of the United States

OCTOBER TERM, 1897.

No. 479.

J. C. ANDERSON ET AL., APPELLANTS,

vs.

THE UNITED STATES, APPELLEE.

Motion by Appellants for an Order on the Circuit Court of Appeals of the Eighth Circuit to Transmit the Entire Record in the Case.

This is a proceeding by injunction under the anti-trust act of July 2, 1890, against the members of the Kansas City Live Stock Traders' Exchange, an incorporated association of merchants engaged in buying and selling live stock at the Kansas City stock yards. A number of affidavits were filed by the respective parties, on consideration whereof the circuit court granted a temporary injunction. An appeal was presented from this order to the circuit court of appeals for the eighth circuit. That court has certified certain questions to this Court for its instruction. Generally, the question is whether such an organization, being similar in its essential

features to mercantile exchanges in the leading cities of the United States, is in violation of the statute referred to. The importance of the question is such that an expression of the views of this Court can, in our judgment, be intelligently had only upon an examination of the entire record. This record has already been printed, and it is our desire that the case shall be passed upon at the earliest convenient date. To these ends the appellants move the Court to order the entire record to be transmitted here, in accordance with the provisions of the sixth section of the circuit court of appeals' act of March 3, 1891, and in further support thereof assign the following additional suggestions:

First. That it appears by the record in this cause, printed under the direction of said court of appeals, a copy of which is filed with and accompanies this motion, that this cause is not within the final jurisdiction of said court, but is appealable from said court of appeals after the final determination thereof by that court; so that after the answers and instructions of this Court upon the questions certified have been given, the cause may again be brought up by either party by appeal for determination upon the whole record. This would entail much additional labor on the courts, add greatly to the expense of litigation, and greatly prolong the same, all of which can be avoided by deciding the case on the whole record.

Second. That it appears from said record that the decree of injunction herein (Record, p. 43) is based on both bill and affidavits; it enjoins the enforcement of certain rules of the exchange, and neither the substance of the affidavits for or against the bill nor the articles of association and rules

(Record, pp. 32–36) are embodied in the certificate, and the importance of the questions to the public, as well as to the Government and to appellants, is such that the same ought to be determined only in the light of the whole record.

Third. That the decree of injunction rendered by the circuit court, from which the appeal is prosecuted, though preliminary in form, does not serve to preserve an existing status, but is mandatory in its character, and so long as it is in force it as effectually destroys said exchange as would a final decree.

JOHN L. PEAK AND
R. E. BALL,
Attorneys for Appellants.

Service of the foregoing motion accepted and consent that same may be filed and submitted.

OCTOBER 20TH, 1897.

J. K. RICHARDS,
Solicitor General.

No. 479. 181.

Brief of Peak for Appts.

Supreme Court of the United States.

Filed Feb. 12, 1898.

October Term, 1897.

J. C. ANDERSON and others, *Appellants*,

vs.

THE UNITED STATES. } No. 479.

Statement, Specification of Errors, and Brief and Argument for Appellants.

R. E. BALL,
With whom are I. P. RYLAND,
JNO. L. PEAK,
Solicitors for Appellants.

HORN PRINTING CO., 109-111 E. Missouri Ave., Kansas City, Mo. Telephone 1758.

Supreme Court of the United States.

October Term, 1897.

J. C. ANDERSON and others, *Appellants,*
vs.
THE UNITED STATES.

No. 479.

STATEMENT.

On June 7th, 1897, the United States, by the district attorney, acting under the authority of the attorney-general, filed its bill of complaint against the appellants in the circuit court of the United States for the Western district of Missouri, attempting to charge the appellants with having violated the act of congress of July 2nd, 1890, entiled, "An act to protect trade and commerce against unlawful restraints and monopolies."

The bill charges that the appellants are all members of a voluntary unincorporated association known as "The Traders Live Stock Exchange;" that the government of the exchange is vested in a board of eight directors, who are members, and the business of the exchange is carried on by this board at the Kansas City stock yards, situated in Kansas City, Missouri, and Kansas

City, Kansas, and in a building owned by the Kansas City Stock Yards Company, which building is so located that half of it is in Missouri and half of it in Kansas; that about half of the appellants transact business and have offices in said building in Kansas and about half in Missouri; that the Kansas City Stock Yards Company own and operate said stock yards located in Jackson county, Missouri, and Wyandotte county, Kansas, being on both sides of the state line, said yards consisting of yards, pens and chutes, railway tracks, sheds, scales, buildings and other means and appliances for receiving, yarding, feeding selling, purchasing and shipping cattle and other live stock; that the board and officers of defendant exchange transact its business partly in Missouri and partly in Kansas; that the Kansas City stock yards is a public market and next to that of Chicago, Illinois, is the largest in the world; that live stock is shipped to said market from the states of Kansas, Nebraska, Colorado, Texas, Missouri, Iowa and Arkansas, and from the territories of Arizona and New Mexico; that large numbers of the stock so received are for sale upon said market and many head are there sold to buyers who reside in other states and territories and who reship to said states and territories, and that vast numbers of the stock so received at the Kansas City yards are shipped from the aforesaid states and territories to Chicago and other Eastern markets, that such stock are shipped under contracts whereby the shipper is permitted to unload at the Kansas City yards for rest, water and feed with the privilege of selling at Kansas City, if prices justify it and the shipper chooses to sell, and that many head of such cattle are sold on the Kansas City market. That a large portion of the live stock, cattle, hogs and sheep are sold to various

packing houses located in Kansas City, Missouri, and Kansas City, Kansas, and large numbers are sold for reshipment to Eastern markets and for export to London and other European markets.

It is then alleged that the live stock so received at the Kansas City market constitute a part of interstate commerce between the various states and territories, particularly those above named.

It is then alleged that the United States has employed and stationed at these yards its inspectors, who inspect live stock.

It is then alleged that in the course of business at the yards, in buying, selling and handling cattle, the same are moved and shifted from that part of the yards in Missouri to that part in Kansas, and *vice versa*, according to the convenience of the stock yards company; that in the sale and reshipment of cattle some are sold and shipped from Missouri and some from Kansas, the loading pens and chutes being in both states and contiguous; that said yards furnish to owners, shippers and dealers in live stock, the only available means at that place for handling, selling and reshipping live stock, and the only available place and means within two hundred miles to the north, south and east, and more than thousand miles to the west for the exchange of interstate traffic in live stock between the states and territories named; that because the business at the yards is done on both sides of the state line, and in the course of doing it, the cattle are at times in Missouri and again in Kansas, the business is interstate commerce and can only be regulated and controlled by federal legislation.

The bill then charges that these appellants and divers other persons were, prior to March, 1897, engaged as speculators upon and at these yards, i. e., in buying upon the market, reselling

upon the same market, and reshipping to other markets in other states; that it is the daily custom and practice of appellants and their associates and others to buy and sell stock in Missouri which are at the time in pens on the Kansas side, and *vice versa*; and deliveries in such cases are made from pens in Missouri to those in Kansas, and *vice versa*; that all live stock shipped to said yards are received and sold by commission merchants to packing houses in Kansas City, Missouri, and Kansas City, Kansas, and said merchants sell large numbers of cattle to appellants and others who resell and reship the same.

It is then alleged that appellants have unlawfully entered into a contract, combination and conspiracy in restraint of trade and commerce among the several states and with foreign nations in this, to-wit: That they have unlawfully agreed, contracted, combined and conspired to prevent all other persons than members of the Traders' Live Stock Exchange from buying and selling cattle at said yards; that the commission merchants to whom cattle are consigned are not permitted and cannot sell to any buyer or speculator at said yards unless such purchaser be a member of the Traders' Exchange, and that appellants and each of them unlawfully and oppressively refused to purchase cattle or in any manner negotiate or deal or buy from any commission merchant who shall sell or purchase cattle from any speculator at said yards who is not a member of said exchange.

It is then alleged that by and through such agreement, combination and conspiracy, the business and traffic in cattle at said yards is interfered with, hindered and restrained, thus entailing extra expense and loss to the owner and placing an obstruction and embargo on the marketing of cattle shipped to said yards; that within three months

certain members, who had traded with speculators not members, had been fined, by the Exchange, and members had been fined who had traded with commission firms that dealt with speculators not members, (though there is no allegation as to what these members were fined for).

It is then alleged, by way of a deduction, that appellants had agreed, combined, conspired and confederated together in violation of the laws of the United States, and especially of Section 1, of the act of Congress of July 2nd, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and have confederated, etc., to prevent and restrain all other persons not members of said Exchange in the prosecution of the business in which appellants are engaged, and that appellants' object and purpose was and is to prevent the sale by any commission firm to any buyer and speculator not a member of the Exchange.

The bill then prays for a dissolution of the Exchange and an injunction.

On July 1st, 1897, the defendants having entered appearance, application was made to the court for a preliminary injunction.

Numerous affidavits were filed by the government in support of the bill (Rec. 12–22) and by defendants contra (Rec. 22–42).

Doerr, for complainant, swore (p 12) that he was engaged at the yards in the same business as defendants; was not a member of the Exchange and that a number of commission firms had declined to do business with him on the ground, as stated by them, that they had been notified by officers and members of the Exchange not to deal with him.

Schmidt, for complainant, made affidavit to the same effect (p. 13).

Blanchard, for complainant, swore (p. 14) that he was a commission merchant; that the buyers on the market consisted of buyers for the packing houses, buyers who take orders for cattle to be reshipped to other markets, farmers and feeders who come from the country and buy on their own account, and "yard traders" or "speculators" who buy various classes of cattle on the market and speculate therein.

His affidavit also states that members of defendant organization had refused to deal with him while they thought he was having business transactions with a trader named Howard, not a member of defendant Exchange.

Greer, of the commission firm of Greer, Mills & Co., for complainant, swore (Rec. p. 15–16) that of the cattle received at the Kansas City stock yards, about 60 per cent are sold directly to local packers; that about 5 per cent are stopped only temporarily for feed and water and go through to other points without changing hands or being placed on the market; that of the remaining 35 per cent about 15 per cent are bought through local commission firms as agents for Eastern parties, about 20 per cent are sold to speculators and traders upon the Kansas City markets; that the members and officers of defendant Exchange had notified the firm of which affiant was a member not to sell cattle to certain speculators not members of said association; that on several occasions, about December, 1896, said firm did sell to traders not members of the said association; that thereupon said members did "boycott" said firm and refused to buy any cattle from said firm and refused to go into the lots and look at cattle consigned to said firm. He further states that of the class of cattle known as stockers and feeders, a great many are bought on said market by parties from the states

of Iowa, Illinois and other states; and that defendants bought all classes of cattle, many fat cattle, which they shipped to other markets.

The affidavits for complainant of Sanderson (pp.) 16, 17, 18), Crumbaugh (pp. 18, 19), Shelbon (pp. 19, 20), and Howard (p. 21) are substantially to the same effect as the foregoing, some of them being speculators and traders in the business at the time the affidavits were made and others claiming that they had been compelled to cease business, not because of any violence or intimidation by defendants or threats of such, but because commission men declined to furnish them with money to buy cattle, and did this for the reason that they preferred to retain the custom of defendants, which they could not do if they continued to patronize the affiants.

On behalf of appellants, Rust, superintendent of the Stock Yards Company, owner of the yards, in his affidavit (pp. 22, 23) gave statistics showing a continuous and enormous increase in the amount of business and number of cattle received, which followed the organization of the defendant exchange, and stated that "no embargo is placed upon anyone purchasing or desiring to purchase cattle at the stock yards, but a free and open market is afforded to all buyers and sellers. The members of the above named (defendant) organization are in the business of buying and selling cattle on the local market and are competitors among and against each other. Their organization in no way restrains or interferes with inter-state or local commerce, and the members do not monopolize or attempt to monopolize the business of buying and selling cattle at Kansas City."

Eubank, "order buyer" for appellants, testified (p. 23) that defendants are buyers and sellers of stockers and feeders on the local market; that

since the organization the market for that class of cattle had steadily improved until it had become during the past year the greatest in the United States or the world. He affirmed that defendant Exchange instead of being a hindrance or restraint, had improved the market, and that defendants had not monopolized, or attempted to, any part of the trade, and could not, if they tried, separately or together, control the market, either in supply or prices.

Substantially the same thing is sworn to by Payne, "order buyer" (p. 24).

The commission merchants who (see complainant's bill Rec. 7, side page 10) receive and sell in the first instance all cattle sold on this market, make affidavit through their respective cattle representatives (Rec. 25) that they are familiar with the operation and the effect on the market of the defendant association; that the members are exclusively engaged in the local trade of buying and selling; that the class of cattle in which defendants deal, namely stockers and feeders, is not handled by them exclusively and they do not attempt to monopolize the trade in such cattle and could not if they would do so; that the controlling prices from day to day are not determined by the yard traders; that the branch of business in which defendants are engaged has greatly and constantly improved since the organization of their Exchange; that the operations of the Exchange have greatly contributed to this improvement, and no hindrance or restraint of any kind has been put upon the market by defendants, and no purpose on their part, to the knowledge or belief of affiants, has ever existed to hinder, restrain or otherwise injure the market for any class of cattle.

It will be seen by comparison of the official list (Rec. pp. 27, 28, 29) of the commission mer-

chants, who are the consignees and original salesmen of all the cattle sold on this market, with the names of the firm representatives who signed this affidavit (Rec. pp. 25, 26, 27) and the affidavit of J. H. Waite and others (Rec. pp. 36 and 37), that all of the commission cattle salesmen, except three, made this oath, and one of the three, Greer, of Greer, Mills & Co., makes the affidavit already referred to (Rec. p. 15) in support of the bill.

The affidavit of W. H. Embry, president of the defendant Exchange, (Rec. p. 29) sworn to by the members of the executive board (Rec. p. 36) and that of various members, defendants, (Rec. pp. 37, 38) show: That the Exchange was organized in September, 1895, and was composed of persons engaged in the business of buying and selling cattle on the local market, who were and are known as yard traders; that prior to that time and since the Stock Yards Company, owner of the yards, assigned certain pens for the use of such traders in handling and disposing of the stock purchased by them, towhich pens cattle bought by any yard trader were and are delivered; that it was important and to the common interest of all persons engaged in the business of yard trading that the most favorable terms should be obtained from the Stock Yards Company as to the location of said pens and securing the best possible facilities for handling stock; that the pens so assigned for defendants' use are and were at the time of the filing of the bill in this case located in the State of Missouri; that at the time of the organization of said Exchange and since, certain persons, engaged in the business of yard trading, were guilty of disreputable business methods, for example, by purchasing culls and afterwards, by arrangement with some commission merchant, mingling them and having them sold with some other herd consigned

to such merchant, or by making purchases without means of payment, and being unable to resell on the same market day, refusing to consummate such purchase, and by other wrongful conduct to the scandal of the trade. That to obtain such advantage and facilities, in the common interest of all, as might be had by united effort, and to correct and prevent such abuses and to promote decent and honorable practices in the trade the association was formed and it had not and has not any other purpose; that (pp. 37, 38), defendants compete with each other, and with all buyers and sellers; that no attempt has been made to limit the number of yard traders to the existing membership of the Exchange, but any and all persons engaged in such business are welcome to become members on agreeing to the articles of association and rules; that (p. 31) defendants buy and sell the class of cattle known as stockers and feeders; that their said business is purely local to this market; that in quarantine cattle, subject to government inspection, cattle shipped through to other markets with or without the privilege of the Kansas City market, and fat cattle sold on the local market or shipped to other states or to foreign countries, defendants do not deal.

That of the volume of stockers and feeders sold on the Kansas City market, since the formation of the Exchange, not exceeding fifty per cent, in the judgment of affiants, have been handled by members of the exchange, and the rest by others; that except in rare instances, both purchases and sales made by defendant are made from and to persons not members; that when the Exchange provided by its rules, agreed to by the defendants, that no yard trader would be recognized, and buyers or sellers would not be employed, by members, unless such traders or employes

were members of the Exchange, it was meant and intended that those yard traders who did not approve of the objects of the association and of concerted action to obtain them, might go their independent way, but the Exchange would not countenance them nor be responsible for their methods.

The affidavit of Neff, publisher of the Daily Drovers Telegram, (pp. 38–42) shows that the Kansas City market for stockers and feeders had steadily grown during the past three years and the most phenomenal development was during the year immediately following the organization of the defendant Exchange, and that the growth of this trade continued in increased ratio up to the date of the application for this injunction. It shows that for more than a year a larger trade in this class of cattle was done at Kansas City than at Chicago and Omaha combined. It shows (p. 39) that on December 10th, 1896, (the date of the compilation of most of the statistics) there were in business at the yards 192 commission men employing 137 salesmen, and 182 yard traders employing 77 men, and exhibits in compact statement all the great features of an enormous industry.

The comprehensive and sufficiently detailed view, which the record shows of this great market and of the relation to it of the defendant association of few more than half of the number of men engaged as yard traders, was enough to cause the learned judge of the lower court to ignore many of the exaggerated, epithetic and plainly untrue averments of the bill. But attention is called to the fact that most, if not all, of such allegations are refuted by other more accurate statements of the bill itself. Thus when it is charged (Rec. p. 8) that defendants "have unlawfully agreed, contracted, combined and conspired to prevent all other persons than members of the Traders Live

Stock Exchange from buying and selling cattle upon the Kansas City market; and that the commission firm, person, partnership or corporation to whom said cattle are consigned at Kansas City as aforesaid is not permitted and cannot sell or dispose of said cattle at the Kansas City market as aforesaid to any buyer or speculator at the Kansas City stock yards unless said buyer or speculator is a member of the Traders Live Stock Exchange"—all this is refuted by the averment (Rec. p. 7) that all of the live stock shipped to and received at Kansas City is consigned to commission merchants, "which said commission firms take charge of said stock when it is received at said yards as aforesaid; that they sell said stock to the packing houses located at Kansas City, Missouri, and Kansas City, Kansas, and they sell large numbers of said cattle to these defendants and to other persons who resell and reship the same;" and it is refuted by all the affidavits filed for the government, in so far as they bear upon the subject, as well as by those filed on behalf of defendants (Greer, p. 15, etc.)

It must be taken from the record, without dispute, and doubtless was so taken by the court below, that the defendants have formed a voluntary association, not for pecuniary profit; that the members are local dealers each on his own account in the class of cattle known as stockers and feeders; that they have nothing to do with any kind of cattle until they buy them after they are placed on sale on the local market; that they resell on the same market; that they do not handle in the aggregate exceeding fifty per cent of the class of cattle in which they deal, which according to the estimate of Greer, *supra*, would be about ten per cent of the total number of cattle shipped to and marketed at Kansas City; that they are in con-

stant competition with each other, with packing house buyers, with representatives of commission firms, with order buyers, and with persons buying and selling on their own account and for others; that the market is a free and open one and they do not control it or attempt to control it, either in supply or prices, but on the contrary they have nothing to do with the supply, and are themselves controlled by the ruling prices which free competition creates; that there are a large number of yard traders not members of this association, rivals for trade of the defendants, who prefer to do business each independently rather than submit to the rules and regulations of an Exchange; that on information of some of these, this bill of complaint was founded; and finally that the gravamen of the complaint by the government is to be found in the charge of the bill. (Rec. p. 8). "And these defendants, and each of them, unlawfully and oppressively refuse to purchase cattle or in any manner negotiate or deal with or buy from any commission merchant who shall sell or purchase cattle from any speculator at the said Kansas City stock yards who is not a member of the Traders Live Stock Exchange."

The bill does not set forth the articles of association and rules, but they are annexed to and made part of the affidavit of President Embry (Rec. pp. 32–36). The rules here in question are:

Rule 10, (p. 34). "This Exchange will not recognize any yard trader unless he is a member of the Traders' Live Stock Exchange."

Rule 11, (p 35). "When there are two or more parties trading together as partners they shall each and all of them be members of this Exchange."

Rule 12, (p. 35, amended p. 36). "No member of this Exchange shall employ any person to buy or sell cattle unless such person holds a certificate of membership in this Exchange."

Rule 13, (p. 35). "No member of this Exchange shall be allowed to pay any order buyer or salesman any sum of money as a fee for buying cattle from or selling cattle to such party."

On July 19th, 1897, the circuit court, without filing any opinion, made the following decree, from which, in due time, this appeal was taken to the Circuit Court of Appeals for the Eighth Circuit (Rec. p. 43):

DECREE OF TEMPORARY INJUNCTION.

This cause having heretofore been heard and submitted, on the bill of complaint, the arguments and brief of the respective counsel, on application for a temporary injunction, pendente lite, and the court being now fully advised in the premises, doth find that on the bill and the affidavits submitted, the application for a temporary restraining order herein should be granted.

It is, therefore, ordered and decreed by the court, until the final hearing and decree on the merits, and until further order and decree of the court, that the defendants herein, and each and every one of them, be, and they are hereby enjoined, either as associates in the said Traders' Live Stock Exchange, or otherwise, from combining, by contract, agreement or understanding, expressed or implied, so as by their acts, conduct, or words, to interfere with, hinder, or impede others in shipping, trading or selling live stock, that is, cattle received from the states and territories at

what is known as the Stock Yards at Kansas City, Missouri, and shipped there from other states and territories, for sale there or for further transportation through the states or to foreign markets. And the said defendants and each of them, are enjoined from in any wise interfering with the freedom of access of any and all other traders and purchasers at said Stock Yards, and equal facilities therein and thereto afforded by the Kansas City Stock Yards Exchange or Company, the same as employed by the defendants as members of the said Traders' Live Stock Exchange.

And it is further ordered and decreed, that the said defendants, either collectively as such Trader's Live Stock Exchange, or through its executive committee, or otherwise, and each of them, be and they are hereby enjoined from enforcing or recognizing or acting under the following rules of the said Traders Live Stock Exchange, to-wit: Rule ten (10), eleven (11), twelve (12), and thirteen (13), and any and all amendments thereof, and from imposing or attempting to impose any fines or penalties upon any of the members of such Traders Live Stock Exchange for trading or offering to trade with any person or persons at said stock yards respecting the purchase and sale of any such cattle; or from discriminating in favor of any member of such Traders Live Stock Exchange because of such membership; and especially from, in any manner, discriminating against any person trading at said Stock Yards in such cattle, and from refusing, by united or concerted action, or by word, persuasion, threat, or other means, to deal or trade with persons who are not members of said association, because of such non-membership, or from dealing with any commission firm at said stock yards who may transact or attempt to transact business, in selling or trading in such

cattle thereat, with any person not a member of said Traders Live Stock Exchange; or in any manner from interfering with the right and freedom of any and all persons trading and desiring to trade in such cattle at such yards, the same as if such Traders association did not exist.

It is further ordered that the defendants have leave to make answer to the bill of complaint herein on or before the 20th day of August, next.

JOHN F. PHILIPS,
U. S. District Judge.

The appeal from this decree having been taken to the said circuit court of appeals, that court duly ordered (Rec. p. 58) that certain questions arising upon the record be certified to this court under the provisions of Section 6, of the Act of March 3, 1891; and this court, by its writ duly issued on the petition of appellants, on October 26th, 1897, (Rec. p. 1), required the entire record to be transmitted here for final disposal of the appeal.

The questions which are vital to the validity of the decree of the circuit court and on which appellants ask its reversal, are:

1. Assuming the business engaged in by appellants to be in extent and character as charged in the bill and shown by the record, are they engaged in inter-state commerce?

2. If so, is it any violation of the Act of Congress of July 2nd, 1890, (26 Stat. L., 209) for appellants, as an association of private traders, to agree upon and act under Rule 10, providing that the Exchange will not recognize any yard trader unless he is a member?

3. Is it any violation of said act for appellants to prescribe as a condition of membership in this voluntary association, as provided by Rule 11, that where any member is in partnership with one or more others, all of said partners shall become members?

4. Is it any violation of said act for appellants to agree upon and act under Rule 12, providing that only members should be employed by members as cattle buyers or salesmen?

5. Is it any violation of said act for appellants to agree upon and act under Rule 13, forbidding any member from paying any sum of money to any cattle salesman to induce him to make a sale to such member, or to any order buyer to induce him to make a purchase from such member?

6. Is it any violation of said act for the apellants, in the conduct of their business as private traders, each on his own account, to discriminate in favor of fellow members?

7. Is it any violation of said act for appellants, severally or by concerted action, to refuse to deal with non-members or with commission firms who deal with non-members, so long as such refusal involves simply the peaceable withdrawal from business intercourse, and is unattended by any force, violence or intimidation, or threats of such, and leaves third parties to their free choice of dealing with appellants or with their competitors?

8. Is not said act of July 2nd, 1890, as construed by the circuit court, in violation of the fifth amendment of the constitution of the United States, in that it deprives appellants of liberty or property without due process of law?

SPECIFICATION OF ERRORS.

We assign and specify the following errors:

I.

That the matters charged in the bill of complaint do not constitute any offense against the Statute of the United States of July 2nd, 1890, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies."

II.

That the circuit court erred in granting a decree for a temporary injunction, because the matters charged in the bill of complaint failed to show that appellants were engaged in inter-state commerce and the matters and acts charged, if true, show that appellants are not engaged in inter-state commerce.

III.

That the circuit court erred in granting said decree, for the reason that the act of July 2nd, 1890, as construed by said court, would violate article V of amendments to the constitution of the United States, forbidding that any person should be deprived of liberty or property, without due process of law.

IV.

That the circuit court erred in granting said

decree, for the reason that under the averments of the bill, and the proof of the affidavits filed, the acts of the appellants enjoined, do not constitute any restraint of trade between the states or with foreign nations, within the meaning of said act of July 2nd, 1890.

V.

That the circuit court erred in granting a preliminary decree enjoining appellants "from combining by contract, agreement, or understanding, expressed or implied, so as by their acts, conduct, or words, to interfere with, hinder, or impede others in shipping, trading or selling live stock, that is, cattle received from the states and territories at what is known as the stock yards at Kansas City, Missouri," for the reasons: (a) That no averment of the bill or the affidavits shows or claims any contract, agreement, or understanding between appellants to hinder or impede others in shipping cattle to and from said market; (b) that "trading or selling live stock" on said market is not interstate commerce, and no act of appellants charged in the bill, or shown by the affidavits, constitue any restraint of such commerce within the meaning of the act of July 2nd, 1890; (c) that "the conduct or words" of appellants, as charged in the bill and affidavits, are only such as they might lawfully use in conducting a purely private and local business and do not constitute any infringement of the act of July 2nd, 1890; (d); that the averments of the bill and affidavits fail to show that appellants, or any of them, have anything to do with cattle shipped to the Kansas City market, "for further transportation through the states or to foreign markets."

VI.

That the circuit court erred in enjoining appellants "from in any wise interfering with the freedom of access of any and all other traders and purchasers at said stock yards," for the reasons: (a) That it is not averred in this bill, nor in any affidavit filed, that such freedom of access is interfered with; (b) that the acts of appellants charged to have been committed do not interfere with such freedom of access, but leave parties trading in said market to their free choice of dealing with members of the Exchange, or with non-members; (c) if the exercise of such free choice on the part of the dealers resulted, as charged, in impeding others in their private business of buying and selling on said market, such result would not be a violation of said act of July 2nd, 1890, or in any wise tend to hinder or restrain inter-state commerce within the meaning of said act.

VII.

That the circuit court erred in enjoining appellants, and each of them, "from enforcing, or recognizing, or acting under" rule 10 of said Traders Live Stock Exchange, which is as follows: "This Exchange will not recognize any yard trader unless he is a member of the Traders Live Stock Exchange," for the reasons: (a) That appellants owe no public duty to recognize any yard trader and the Exchange and its members, being an association of private traders, have a right, under the constitution and laws, to recognize whom they please, and may "select their patrons," and may wholly, or partly "cease to do any business, when their choice lies in that direction;" (b) that the "enforcing or recognizing or acting under" said rule

does not constitute any restraint of inter-state commerce within the meaning of said act of July 2nd, 1890.

VIII.

The circuit court erred in enjoining appellants "from enforcing, or recognizing, or acting under" rule 11, which is as follows: "When there are two or more parties trading together, as partners, they shall each and all of them be members of this Exchange," for the reasons: (a), That this voluntary association of private traders have the right to prescribe such conditions of membership as they see fit, and as may be freely acceded to by those joining the organization; (b) neither the bill nor affidavits charge or show any threats of violence or conduct, upon the part of the appellants interfering with or abridging the right of any trader to become a member or not, as his choice may dictate; (c) the "enforcing, or recognizing, or acting under" said rule constitutes no violation of the statute, and does not restrain commerce between the states, or with foreign nations.

IX.

That the circuit court erred in enjoining appellants from enforcing, or recognizing, or acting under rule 12, which is as follows: "No member of this Exchange shall employ any person to buy or sell cattle, unless such person hold a certificate of membership in this Exchange," for the reasons, (a) That appellants, being private traders, each upon his own account, have a right under the constitution and laws of the United States to employ anybody or nobody, for any reason, or no reason, as they may see proper; (b) being voluntarily as-

sociated, the appellants have a right to agree to employ only members, and in so agreeing they do not violate the statute, nor in any wise, restrain inter-state commerce.

X.

The circuit court erred in enjoining appellants from "enforcing, or recognizing, or acting under" rule 13, which is as follows: "No member of this Exchange shall be allowed to pay any order buyer, or salesman, any sum of money as a fee for buying cattle from, or selling cattle to, such party," for the reasons: (a) That appellants have a right to agree voluntarily, that they will not bribe the agent of an owner to make a sale to them, nor bribe the agent of a purchaser to make a purchase from them; (b) that the enforcement of this rule against bribery is lawful, and not in violation of the statute or in restraint of inter-state commerce.

XI.

That the circuit court erred in enjoining appellants from "enforcing, or recognizing, or acting under" said rules, for the reason that said rules are private regulations, voluntarily agreed to, with which the public has no concern, and their enforcement or recognition or action thereunder, by appellants, directly affect appellants only, and do not directly or indirectly restrain inter-state commerce.

XII.

That the circuit court erred in enjoining appellants "from discriminating in favor of any member of such Traders Live Stock Exchange, because of

such membership," for the reasons: (a) That the bill does not charge any such discrimination; (b) if such act of discrimination by a private trader is lawful when done for any reason, it would not be a crime where the act was the same, but the reason was "because of such membership;" (c) appellants have a right, as private traders, to make discriminations in their business, even "unjust discriminations," and can favor one another if they see proper to do so; (d) that such discrimination does not restrain, or tend to restrain, inter-state commerce within the meaning of of the statute.

XIII.

That the circuit court erred in enjoining appellants "especially from in any manner discriminating against any person trading at said stock yards in such cattle, and from refusing, by united or concerted action, or by words, persuasion, threat, or other means, to deal or trade with persons who are not members of said association, because of such non-membership," and from refusing to deal with commission firms who deal with non-members, for the reasons: (a) That "the mere private trader may sell to whom he pleases," "he may select his patrons," and "may make such discrimination in his business as he chooses," and may even "make unjust discrimination;" (b) that no threat is charged in the bill, or shown; (c) that no persuasion or other means are charged in the bill, or shown by the affidavits to have been used, except such as appellants had a perfect right, under the Constitution and laws, to employ; (d) that appellants have a right, under the Constitution and laws, to cease dealing with any person, for any reason satisfactory to appellants; (e) that appellants, as private traders, owe no duty to any

person to deal with such person, and cannot lawfully be compelled to so deal, no matter what their reason for refusing to do so; (f) refusal to deal by a private trader is not a crime, and is not made so, by any particular reason for such action; (g) that the mere "refusing by united or concerted action, or by words, or persuasion, to deal" with any person is not a violation of the act of July 2nd, 1890, does not constitute a restraint of inter-state commerce, and does not interfere with or restrain any commerce; (h) that appellants, severally and together, have the right to cease to do business with any or all of the cattle salesmen, at the stock yards, "when their choice lies in that direction."

XIV.

That the matters charged in the bill of complaint do not constitute any offense at the common law or under any statute of the United States, and the court erred in rendering said decree and in refusing to dismiss the bill.

BRIEF AND ARGUMENT.

Believing that the case is half argued when the propositions involved are fully stated, we have endeavored in the foregoing analysis of the facts to state with clearness and accuracy the questions which arise. Disregarding the subdivisions of the inquiry, the case presents three general points:

First: Whether appellants are engaged in inter-state traffic.

Second: If so, whether by the acts which they are charged to have done and the agreements which by their rules they have entered into, they violate the act of July 2nd, 1890; and,

Third: Whether that act, as construed by the circuit court, is in violation of the fifth amendment to the constitution of the United States, forbidding that any citizen shall be deprived of liberty or property without due process of law.

As to the first proposition it is propounded in that way on the assumption that if the appellants are not engaged in inter-state trade, then *ex necessitate* no combination or agreement among them affecting such trade, even though it were *per se* unlawful, could be in violation of the act of congress. It is assumed in that question that the law is, as unanimously held by this court in *United States vs. E. C. Knight & Co.*, hereafter referred to, that granting inter-state commerce to be restrained for the sake of the argument, yet if the restraint is *indirect* or *incidental*, then "how-

ever inevitable or whatever its extent," it does not constitute an infraction of the federal law. If, therefore, in view of all the averments of the bill and the attitude of appellants with reference to this market, as the same is disclosed by the record, they are not engaged in a trade which it belongs to the federal authority to control and regulate—*i. e.*, inter-state trade—it must follow, regardless of the lawfulness or unlawfulness of their acts and agreements in respect of such trade, that the corrective authority does not reside in congress, and irrespective of the character of their acts and agreements, there would be no violation of the act of July 2nd, 1890.

The argument under the second point, as to the legality of appellant's acts and agreements, though it deals severally with the various acts which they are forbidden to do and with some that they are affirmatively commanded to do, is based throughout on the claim by appellants that they have the right, irrespective of whether their trade is local or inter-state, to do each and all of the things which, by the decree of the circuit court they are forbidden to do, and have an equal right not to do the things which by that decree they are virtually commanded to do.

The third general point in the case involves the serious inquiry (if the act of July 2, 1890, does when construed independently of the constitution, really prohibit the doing of the acts enjoined by the decree appealed from, and compel the doing of the acts commanded by that decree to be done) whether that act itself thus construed is violative of the fifth amendment of the constitution of the United States, providing that no person shall be deprived of liberty or property without due process of law.

The different detailed specifications of error,

the general question of whether the bill states any case under the statute on which it is based, and the minor consideration, on the various phases of the decree, of whether the same should not be wholly or partly reversed, are all covered by a complete view of the matters bearing on the foregoing questions.

We assert the propositions which follow:

I.

Conceding all the facts charged in the bill, even those above noted in which the bill contradicts itself, the appellants are not engaged in, and their organization does not relate to, inter-state commerce.

Bearing in mind that this association of cattle traders is charged under a penal statute of the United States with being a set of banded criminals, with having severally committed acts which will subject them to indictment and heavy punishment; that the circuit court's decree is a finding, preliminarily and on the showing made by the bill and affidavits of guilt on the part of appellants; that although the form of the action brought by the district attorney is in equity, yet the rules to be applied must be the same as if the government had presented the charge by indictment of a grand jury—let us look, first, in this light, at the showing made by the bill and the affidavits filed in support of it, and see whether a preliminary finding that appellants are engaged in inter-state commerce, and therein have violated the Sherman act, can be sustained.

The general allegations of the bill in regard to the nature and diversified character of the Kansas City cattle market, have nothing to do with the point. By the bill itself and the affidavits filed

by the government, as well as by those presented by the appellants, the business in which they are engaged is that of buying and selling on the local market. The showing made as to quarantine cattle, under government inspection, is wholly irrelevant, since appellants have not and are not charged with having anything to do with such cattle, unless and until they pass quarantine and are exhibited for sale on the *local* market, and then appellants in no event appear except as local *buyers*. In point of fact, the undisputed showing is that they have nothing to do with quarantined cattle at all. Likewise the allegations in regard to cattle unloaded at this market for rest and feed, with the privilege of being sold locally or shipped on, as the shipper might elect (constituting about five per cent of the receipts according to the testimony of Greer, for the bill, Rec. p. 15), have nothing to do with the question, since it is not claimed that the trade of appellants touches this class of cattle, except maybe in the event that the local market is made their final destination, and they are therein placed on sale. Now, what was the purpose of these allegations? We assert that they had their birth in the consciousness of the district attorney that he could not invoke the authority of the government unless he could succeed in showing that appellants were engaged in inter-state trade, and that their agreements and acts directly interfered with and restrained such trade. We assert that the counsel for the government, who prepared this bill, conceived and conceded in his own mind that it was necessary to emphasize in the bill the inter-state features of this market, in order, if possible, to show that the appellants were engaged in inter-state commerce, but he did not, at least, so far vary from the undisputed fact as to charge that appellants operated otherwise

than as buyers of cattle offered for sale on the local market and sellers of the cattle so bought on the same market. This position of the appellants, as purely and solely local dealers, we hold to be of essential importance in the correct determination of the soundness of the proposition which heads this paragraph.

This consciousness on the part of the pleader, to which we have referred, is still further (Rec. p. 6½, 7) evidenced by the elaborate effort of the bill to make out that appellants' trade is inter-state by reason of the accidental geographical situation of these yards in two states, and because persons, buyer and seller, standing on the Missouri side of the line, bargain as to cattle then in a pen on the Kansas side, and because cattle bought by some of appellants are often moved afterward from one side of the line to the other. Why was not the additional reason given that the state line runs through pens and alleys and often through the midst of a herd at the time it is being sold, (Embry, Rec. p. 32) so that the herd and even parts of the same animal are in both states at once, and therefore a sale in such case is an inter-state transaction?

Could any contention be more absurd? If a thrifty citizen should acquire real estate and erect a store with the state line dividing it, and there sell merchandise, would he be amenable to the laws of neither state? Could he stand on the Missouri side of his building and sell goods then located on the Kansas side, and reverse the process when selling goods located on the Missouri side, and claim as against state tax laws and all local regulation the protection of the federal government, because that is inter-state commerce? And would his contention be strengthened, if he showed that often, after selling goods located on

the Kansas side, he had them taken for delivery to the exit on the Missouri side of the building, and in doing so they were taken across the state line? Yet this would not be a whit more ridiculous than the grounds on which the government urges in this bill that appellants are engaged in inter-state commerce.

It would seem plain from the authorities, and from reason, that a bargain and sale made in a public market would be regarded as a purely local transaction as to the seller, and certainly so as to the buyer, even when a state line geographically divided the herd of cattle sold; and although a sale might be made in one state and the title and ownership there pass to the buyer, yet the circumstance of the state line being incidentally crossed in moving the cattle from pen to pen, could not be construed so as to render the transaction of buying and selling a matter of inter state commerce. In the case at bar no opinion was delivered by the circuit court, and it would probably not be proper for us to state, *dehors* the record, the orally expressed views of the court on this question. But in the case of *Cotting vs. Kansas City Stock Yards Co.*, 79 Fed., 679, the circuit court for the District of Kansas, speaking of this precise matter, said (p. 682): "In handling the stock, some of it is driven across the state line, and perhaps returned again as it may be most convenient for yarding and feeding or removing from the pens. Can it be because it is located in two states and does business in both, it is answerable to the legislative power of neither state? I think not. It cannot be maintained that its business is inter-state to the exclusion of all state business." The same view was taken by the same court in *United States vs. Hopkins*, now pending here, and in which the traffic of those

engaged in business on the yards was directly involved.

The decisions of the federal courts show clearly what is inter-state commerce, where it begins and where it ends; that national and state jurisdictions do not overlap or interfere; that where one terminates the other attaches; and that the occupation of appellants is purely local.

In *Coe vs. Errol*, 116 U. S., 517 (525), it is said: "There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us a legitimate one for this purpose, in which they commence their final movement for transportation from the state of their origin to that of their destination. When the products of the farm or of the forest are collected and brought in from the surrounding country to a town or station, serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports, *nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination, or have started on their ultimate passage to that state.*"

Kidd vs. Pearson, 128 U. S., 1.

Lehigh Valley R. R. vs. Penn, 145 U. S., 192.

By these and many other authorities which will be cited, as well as by the clear reason which defines the line of demarkation between state and federal authority, it is plain that transportation is an indispensable accompaniment or incident to

inter-state commerce, and such commerce does not *begin* until transportation begins. It is equally clear that it *ends* and local authority re-attaches when the state of destination is reached and the article placed on sale.

Brown vs Houston, 114 U. S., 622.

In *Hynes vs. Briggs*, 41 Fed., 468 (470) the court says: "When goods are sent from one state to another for sale, they become a part of the general property of the state into which they are introduced and amenable to its laws. * * * He (plaintiff) was selling goods then in the state as other local merchants do. He was not engaged in inter-state commerce, and cannot claim immunity from the tax imposed on stove range agents on that ground."

In *United States vs. E. C. Knight Co.*, 60 Fed., 306 (309-10) it is said: "It is the stream of commerce flowing across the states and between them and foreign nations that Congress has authority to regulate. To prevent *direct interference* with or disturbance of this flow alone, was the power granted to the federal government. *Congress has, therefore, no authority over articles of merchandise or their owners, or contracts or combinations respecting them, which have not entered into this stream, or having entered, have passed out.* To extend this authority to business transactions which have no *direct* relation to this commerce, but which *incidentally* affect it, would be unwarranted by the constitutional provision." (S. C., 9 C. C. A.; 156 U. S., 1.)

In the Dueber Watch Co. case, 66 Fed., 642, the Circuit Court of Appeals said: "Whatever differences of opinion there may be as to the mean-

ing of these words when used in the statute, there is and can be no dispute as to one qualification expressed in the act: the trade or commerce restrained or monopolized or attempted to be monopolized, must be inter-state or international. The statute expressly so says, and whatever its phraseology, it must be so construed, if it is to stand, since it is only such trade or commerce that Congress has authority to regulate. * * * The circumstance that after manufactured products are sold within the state, they may be again sold for introduction into another state, and thus become a subject for inter-state commerce, does not change the situation, for it is only when a commodity has begun to move as an article of trade from one state to another that commerce in that commodity between the states has commenced." (per Judge Lacombe).

In the same case, Judge Shipman, concurring, says: "My reason for regarding the complaint as demurrable is the more technical one that the allegations in regard to the acts which the defendants committed, or in regard to the facts which are charged to haue existed, do not show that the defendants restrained any inter-state commerce, or monopolized any part of such trade or commerce."

In charging the grand jury, Judge Grosscup, 62 Fed., 828, said (830): "Any thing which is designed to be transported for commercial purposes from one state to another, *and is actually in transit*, and any passenger who is actually engaged in any such inter-state commercial transaction, and any car or carriage actually transporting or engaged in transporting such passenger or thing, are the agencies and subject matter of inter-state commerce, and any conspiracy in re-

straint of such trade or commerce is an offense against the United States."

In re Greene, 52 Fed., 104, Mr. Justice Jackson says (113): "Commerce among the states, within the exclusive regulating power of congress, consists of intercourse and traffic between their citizens and includes the transportation of persons and property as well as the purchase, sale and exchange of commodities. *County of Mobile vs. Kimball*, 102 U. S. 691–702; *Gloucester Ferry Co. vs. Pennsylvania*, 114 U. S., 203.

"In the application of this comprehensive definition, it is settled by the decisions of the Supreme Court that such commerce includes not only the actual transportation of persons and commodities between the states, but also the instrumentalities and processes of such transportation. * * * When the commerce begins, is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carriage for transportation, or the actual commencement of its transfer to another state; * * * and further, that after the termination of the transportation of commodities or articles of traffic from one state to another, and the mingling or merging thereof in the general mass of property in the state of destination, *the sale, distribution and consumption thereof in the latter state forms no part of inter-state commerce. Pensacola Tel. Co. vs. Western Union Tel. Co.*, 96 U. S., 1; *Brown vs. Houston*, 114 U. S., 622; *Coe vs. Errol*, 116 U. S.. 517–520; *Robbins vs. Taxing Dist.*, 120 U. S., 497; and *Kidd vs. Pearson*, 128 U. S., 1."

The important point in correctly determining the proposition now under consideration is, when does the aegis of federal authority cease to protect the imported article? When does its disposition and movement cease to be inter-state commerce? It was claimed in the circuit court, that property shipped from a foreign state to a local market and exhibited for sale remains inter-state commerce, exempt from all but federal control, until a sale is actually made. It will be borne in mind that appellants are *buyers* on a local market of cattle there placed on sale by their owners, and *sellers* of the cattle thus bought on the same market. We deny that such transactions are inter-state commerce. We deny that the disposition of imported cattle so placed on sale is any part of such commerce. If it were so, then every owner who exhibits goods for sale, which he has imported from another state or country, would be exempt from all local merchandise tax. Imported machines, imported dry goods, imported clothing, imported groceries, imported articles of any kind, placed on sale on a local market could not occupy in the eye of the law any different position, in respect of their sale, or the disposal of them be any less inter-state commerce, than that of imported cattle so placed on sale. The unqualified proposition that an imported commodity remains under federal control until a sale is actually made, would necessarily apply to all articles, and the absurd conclusion would follow that possibly ninety-nine per cent of the tax on merchants, state and municipal, is unconstitutional as an attempted regulation of inter-state commerce. The "original package" cases have no bearing on the question. Is a live animal, a commodity of the farm, any more an original package than a sewing machine, or a bolt of dry goods, or a piece of jewelry? It is

an article of commerce, and not less so because from its nature it must be exhibited for sale in a pen, instead of on a shelf or in a show case.

But it was admitted by the counsel for the government in the circuit court, and doubtless will be so admitted here, that an imported article is loosened and freed from the control of the federal government, whenever it has "passed into and become commingled with the mass of the property of the state." This language is frequently found in the decisions, and just when this "passing into and becoming commingled" occurs is important.

On the one hand it is clear that it will not do to say that the authority and protection of the government is relinquished as soon as the article which is the subject of inter-state commerce passes the boundary line and enters the state of its destination. It certainly does not, by virtue of this fact alone, "pass into and become commingled with the general mass of property in the state." On the other hand the theory of the bill in this case is false in that it assumes that the traffic remains and continues inter-state until a sale of the imported article is made, and that such article does not become "commingled" and subject to local jurisdiction until thus sold. The bill, as heretofore stated, exhibits a strained attempt to establish that the *sales* of imported articles are a part of inter-state commerce, and that not only those who *sell* but those who *buy* such articles on a local market are engaged in inter-state commerce and their conduct therein is subject to the control and legislation of the federal government. This we deny. If these appellants, who buy imported cattle placed on sale by their owners in the pens of the Kansas City stock yards, are when doing so, engaged in inter-state commerce, then it must follow that every purchaser of almost every article sold in the various emporiums

of trade in a non-manufacturing state like Missouri, are engaged in inter-state commerce, the buyer of a paper of pins not less so than the purchaser of a steer. It must further follow that in respect of all such traffic in imported articles, no local authority to tax or regulate exists. We deny this, and assert that where the importer or his agent places on sale in any local market an imported article, *he by that act* mingles such article in the mass of local property so as to deprive the transaction of its sale of the character of inter-state commerce.

In *Brown vs Maryland*, 12 Wheat: 419, the case on which all the original package decisions were founded, and the case on authority of which it was afterward sought to establish the doctrine that in *every* instance *a sale* was necessary by the importer before the imported article could be "commingled in the general mass" of local property—in that very case such doctrine is rejected by Chief Justice Marshall, (p. 443) when he says: "This state of things is changed if he sells them, *or otherwise mixes them with the general property of the state*, by breaking up the packages and traveling with them as an itinerant peddler * * * In the last case, the tax finds the article already incorporated with the mass of property by the act of the incorporator." So, by this decision, the importer *may* mingle the article with the mass of local property otherwise than by sale, and may do so by placing them on sale, by himself or through an agent.

In another unanimous decision of this court, the effect of the decision in *Brown vs. Houston*, *supra*, is thus declared: (*Emert vs. Missouri*, 156 U. S., 296, 317): "In *Brown vs. Houston*, (1885)

114 U. S., 622, coal brought in flat boats from Pittsburg to New Orleans, *was still afloat in the Mississippi river after its arrival, in the same boats and in the same condition in which it had been brought, and was held in order to be sold on account of the original owners by the boat load.* Yet this court unanimously decided that a tax imposed by general statutes of the State of Louisiana upon this coal was valid, and speaking by Mr. Justice Bradley, said: * * * '*It was imposed after the coal had arrived at its destination, and was put up for sale.* The coal had come to its place of rest, for final disposal or use, and was a commodity in the market of New Orleans.'"

This court, by the same eminent justice who delivered its opinion in *Coe vs. Erroll* and *Brown vs. Houston*, made the distinction for which we contend, in *Robbins vs. Shelby Taxing District*, (1887), 120 U. S., 489, where it said (p. 497): "As soon as the goods are in the state and become part of its general mass of property, they will become liable to be taxed in the same manner as other property of similar character, as was distinctly held by this court, in the case of *Brown vs. Houston. When goods are sent from one state to another for sale, or in consequence of sale, they become part of its general property and amenable to its laws.* * * * *But to tax the sale of such goods, or the offer to sell them, before they are brought into the state, is a very different thing*, and seems to us clearly a tax on inter-state commerce itself." The same distinction is unanimously recognized by this court in the case of *Emert vs. Missouri*, (1895), 156 U. S., 296, where counsel for plaintiff in error strenuously argued, as appears from their brief, that the amalgamation of imported articles with the mass of local property could only be effected by *sale* of

such articles. But the court, speaking by Mr. Justice Gray, after an exhaustive and thorough review of all the cases, theretofore decided, bearing on the question from *Brown vs. Maryland* down to the date of the opinion, said (311): "There is nothing in the case to show that he ever offered for sale any machine that he did not have with him at the time. His dealings were neither accompanied nor followed by any transfer of goods, or of any order for their transfer, from one state to another, *and were neither inter-state commerce in themselves nor were they in any way directly connected with such commerce.* * * * Both the occupation and the goods, therefore, were subject to the taxing power and to the police power of the state."

Again, in *Pittsburg, etc., Coal Co. vs. Bates*, 156 U. S., 577, where coal, still in the original barges by which it was imported, was moored in the Mississippi river, off Baton Rouge, to be sold there or further transported, as the importer might choose, a tax was levied thereon by the parish of East Baton Rouge. The importer sought to enjoin the collection of the tax on the ground that the property had not become "commingled with the general mass of property" of the parish, and in the brief in that case strong effort was made to induce the court to modify or overrule *Brown vs. Houston*. But the court, speaking by Mr. Justice Field, again unanimously sustained the doctrine of that case, and said (589): "The property in this case, as in that, still belongs to the original owners in Pennsylvania, but is brought on the navigable waters of the United States in boats and barges to Louisiana for purposes of sale, and is subject to taxation and sale as any other property of the citizens of the United States is subject when it becomes incorporated into the bulk of the property of the country."

These propositions are established:

1. The location of the Kansas City stock yards in two states, and the facts alleged and shown in relation thereto does not render the business of buying cattle on this market and reselling on the same market inter-state commerce.

2. When the importer places an article of commerce on sale in a local market, *he by that act* incorporates it into the mass of local property in the state where it is offered for sale, and the purchaser of such article is not engaged in inter-state commerce.

3. Combinations and agreements respecting a purely local trade are not subject to the control of the government of the United States, and cannot come under the condemnation of its penal laws.

4. Contracts, combinations or conspiracies among those engaged in domestic commerce "might unquestionably tend to restrain *external* as well as *domestic* trade, but the restraint would be an *indirect* result, *however inevitable and whatever its extent*," and even in such case there would be no violation of the act of July 2nd, 1890. (*E. C. Knight Case*, 156 U. S., 1–16).

From the foregoing considerations and the authorities in their support, it must follow that appellants are not engaged in inter-state commerce, and their organization in respect to such trade as they do engage in could not be in violation of the act of of congress in question.

II.

No act or agreement of appellants, charged in the bill, and no act or agreement not so charged, but from the doing or enforcing which they are enjoined, constitutes any violation of the Act of Congress, or is otherwise unlawful. This is true, waiving for the sake of the point, the character of the trade engaged in by appellants, whether inter-state or local.

Since many of the detailed specifications of error are in our view to be determined on the same reasoning and authorities, the general proposition above stated is laid down for convenience of presentation and to avoid unnecesary prolixity and repetition. In the review of the various points of the decree, the general question raised will be followed by a statement of the particular grounds on which it is contended that the decree is erroneous in each several feature of its terms. The initial paragraph of the injunction (Rec. p. 44) whereby appellants are restrained "from combining by contract, agreement or understanding, expressed or implied, so as by their acts, conduct or words, to interfere with, hinder or impede others in shipping, trading or selling live stock" on this market (Specification V); and "from in any wise interfering with the freedom of access of any and all other traders and purchasers at said yards" (Specification VI) first invites attention. The generality of this language, if it stood alone, might be such as to puzzle a citizen honestly disposed to obey the laws of his country; and his uncertainty would naturally arise from his ignorance of *what acts* of his, in the meaning of the law, would constitute "impeding" or "interference."

If two rival tradesmen, according to the most legitimate methods conceivable, seek the custom of the same party, the successful one, in a substan-

tial sense, "impedes," "hinders" and "interferes with" the operations of the other. There is nowhere in this record, in the bill or out of it, any claim that appellants hindered, impeded or interfered with their rivals or prevented their free access to the market, by any process of physical compulsion, force, violence or intimidation, or threats of such. We feel justified in assuming, therefore, that in the estimation of the government's counsel and of the court granting the injunction, the particular acts and agreements afterward specified and prohibited in the decree were the unlawful means whereby the hindrance, impeding, interference and prevention of access were accomplished. So that the matter involved in the two points of error mentioned is merged in the important inquiry on this branch of the case of whether, by the particular acts and agreements enjoined, the appellants violate the act of July 2nd, 1890.

Having in mind that the bill is replete with epithets and averments of mere conclusions of law we think it proper to quote here from the great decision of Mr. Justice Jackson In *re*, *Greene*, 52 Fed. 104, (111): "If the particular acts or facts charged do not, as a matter of law, constitute contracts, combinations and conspiracies in restraint of trade and commerce among the several states, or a monopoly, or attempt to monopolize any part of such trade or commerce, no amount of averments or allegations that the accused engaged in a combination, or made contracts in restraint of such trade or commerce, or monopolized or attempted to monopolize the same, will avail to sustain the indictment. *Whether the accused is charged with an offense is to be determined by the particular acts or facts set forth, and not by the conclusions of the pleader.*"

1. Looking at the acts or facts uncovered from the mass of argumentative pleading in which they are imbedded, it is apparent that the fundamental matter of complaint, as alleged, is that appellants "refuse to purchase cattle, or in any manner negotiate or deal with or buy from any commission merchant" who sells to or buys from any speculator not a member of the exchange (Rec. p. 8); and the central point of the decree (Rec. p. 44) is that appellants, and each of them, should be restrained "from discriminating in favor of any member, *because of such membership*, and especially from, *in any manner*, discriminating against" or refusing to deal or trade with non-members (or those who deal with them) "*because of such non-membership.*" So that the chief misdemeanor of which appellants were esteemed guilty consisted in favoring each other, *because of membership*, and in refusing to deal or trade with certain others *because of non-membership*. These acts, *if done for these reasons*, are, according to the decree, in actual restraint of inter-state commerce and a consequent violation of the act of congress; but it is fair interpretation to say that *if the same acts* were done *for any other reason* (as, for example, if discrimination in favor of a member was because he was a particular friend, or especially honorable and upright in his dealings, and discrimination against a non-member was because he was disreputable in his methods and a scoundrel in character, or because he countenanced and supported such people), then such acts of discrimination, though, in fact, identical with those which restrained inter-state commerce, would nevertheless not in fact operate to restrain such commerce, *and this by virtue of the reasons which prompted them.*

In relation to this point of the decree, *i. e.*,

discrimination for, by reason of membership, and against, by reason of non-membership, several propositions seem evident.

(*a*) *The effect of any given act or agreement on trade, that is, whether it does in fact restrain, check, hinder or impede trade, cannot be determined by the motive which animated the perpetrator.*

No act or agreement could violate the statute under consideration unless in effect and fact it restrained inter-state trade. If it did so, it would constitute a violation of the law, regardless of the motive or reason of the doer or contractor. If a given act or agreement of discrimination in trade actually produced a restraint of trade, its effect would not be different, because in one case and another, a different reason caused it. It would not be a crime in one case where the reason was "because of such membership or non-membership," and be a lawful or laudable act or agreement in another case, where the reason was something else. This court, in the Trans-Missouri Freight case, 166 U. S., 290, under the supposed compulsion of which the decree appealed from was rendered, but which we rely on here and hereafter, said (p. 341): "In the view we have taken of the question, the *intent* alleged by the government is not necessary to be proven. The question *is one of law* in regard to the meaning and effect of the agreement itself—namely: *Does* the agreement restrain trade or commerce in any way so as to be a violation of the act?" So that we insist on this proposition that the question is: Whether acts or agreements of discrimination by private traders on a local market in the conduct of their private business, for or against those similarly engaged, do in fact and effect restrain inter-state commerce; and we insist

that the burden, which the defense of this decree imposes on the counsel for the government, requires counsel to hold that such acts and agreements are restraints and offenses against the statute, regardless of the reasons for them. This the defender of the decree cannot logically shrink from.

(*b*) *Restraint of the trader* (*competitor*) *is not a restraint of trade.*

The simplest, msot legitimate process of rivalry for the same custom must result in "restraining," "hindering," "impeding" the unsuccessful rival. If two sellers of cattle solicit the same purchaser, by as much as one succeeds the other fails, and the restraint of the trader has followed but no "restraint of trade." The uncontradicted proof in this case shows (Rec. p. 39) that in December preceding the filing of this bill there were 259 traders, employers and employees, engaged in business on these yards, of whom about 150 had joined this association. Those who had not seen proper to join, who did not care to have their methods revised and scrutinized by any organization of their fellows, and who preferred the free and unrestricted license of operating as they pleased, honorably or otherwise, thought that they could fare better in their competition with their organized rivals by each pursuing his own undisciplined way, as he had the unquestionable right to do. They chose, as better for the individual interest of each, the unbridled course of independent dealers, as they had a right to do. If they "boycotted" the organization or those who dealt with them, and succeeded in routing their antagonists in the field of free competition, no complaint of it has been filed by the district attorney, and they have not as

yet been charged with operating in restraint of inter-state commerce. Whether in case this one-third of the traders on this market had succeeded in making their trade sufficiently attractive to demoralize and defeat their organized comepetitors, they would have been arraigned as having operated in restraint of inter-state commerce, is matter of prophecy in which we cannot deal. But since the fact is that the commission merchants who are sought as the customers and patrons of the two sets of competitors, the organized and unorganized, happen, in the strife of commerce, to prefer recognizing and dealing with those who deal from a standpoint of regularity and responsibility; since the further fact is (Rec. p. 25) that by the practically unanimous testimony of the cattle salesmen on this market the appellant association has resulted in greatly improving the market, which is perfectly shown by the statistics of business (Rec. p. 42); it is plain that the complaint here is not that *the trade* has been restrained, but that certain disgruntled and discomfitted *traders* have been. We say that this is the complaint. No allegation of the deteriorated condition of the market, brought about by this association, is made, and it would be completely refuted by the record if it had been. No such issue is tendered.

But the showing is, by the bill and affidavits in its support, that appellants, by inducing certain commission merchants to patronize them exclusively, *as a result*, injured their rivals. A fatal mistake of the theory of the bill and of the decree, is that "hindering," "impeding" and even driving out competitors by ordinary and, as will be shown, legitimate methods, is a violation of the statute, though the trade, the market, be not injured, but improved. As is stated in one case, "the effort of all competition is to drive out competitors." Here

two rival sets of traders engage in a struggle for supremacy; one is worsted, and invokes the strong hand of the government to crush its antagonist. There is no offense but success, no crime but getting the better of your competitor, is the theory of the bill and the decree; and this, though the *market* is benefitted rather than injured, though *the trade* is phenomenally developed rather than restrained.

(*c*) *Appellants cannot be compelled to deal with others.*

An injunction restraining one from refusing to do a thing makes it mandatory upon him to do that thing. The injunction is against "refusing to deal because of such non-membership," but, as has already been pointed out, if a refusal, prompted by that reason, would in effect and fact restrain inter-state commerce, it would demonstrably have the same effect if based on a different reason; and, if such refusal did not have the effect to restrain trade, within the meaning of the statute, the reason for it could not give it that effect. A command to deal and trade, then, becomes an absurdity, since it could only be obeyed by the individual enjoined acceding to such terms as might be imposed by the other party.

(*d*) *These appellants as private traders, each on his own account, owe no duty, public or other, to deal or trade with anyone and their refusal to do so, with or without reason, is not a violation of the statute.*

The assumption of the existence of such a duty on their part is a conspicuous fallacy in the

theory of the bill and of the decree. They "unlawfully and oppressively refuse to purchase or deal," says the bill. They must not discriminate in favor of a fellow member, nor refuse to deal with or "*in any manner*" discriminate against any outsider, but in all their business dealings on these yards they must act towards others engaged in business "the same as if such Traders' Association did not exist," enjoins the decree. This deprivation of the freedom to act and to contract in reference to purely private business cannot, it is believed, be matched in any adjudication that preceded the one under review.

The acts of the appellants, which we have been considering, were the means employed to benefit their private business, and no prevention or hindrance to others except what resulted from these acts is charged. The term "boycott," as applied to the alleged acts, is plainly misused. That word had its birth in violence and intimidation, and this element of its meaning must remain inseparable from its correct and proper employment.

Peaceably abstaining from business intercourse with certain persons, is the head and front of appellants offending as charged. This they had a right to do, and in doing so they did not interfere with or restrain inter-state commerce, and did not "boycott" anybody. They each and all, as private traders, had and have the right, separately or together, to cease doing business with any or all other persons on this market, and can so cease without offense to any of the laws of the United States, and without violating any of the rights of others.

No man, prior to this, was ever held entitled as a matter of law to the private custom of a number of his fellows.

Turning now to the authorities bearing on the various propositions above stated, we find them sustained with unanimity.

In *Prescott, etc., R. R. vs. Atchison, etc., R. R.* 73 Fed., 438, Judge Lacombe said: "All legislation interfering with the right of the individual, whether he be a natural person or a corporation to enter into contracts or exercise his preferences as to the persons with whom he shall do business, should be cautiously construed. It is legislation of a novel character, and should not be extended beyond the plain import of the language of the law makers."

The debatable point as to what means may be employed, and what may not, in the battle of free competition, is well stated by Judge Oliver Wendell Holmes in *Vegelahn vs. Gunter*, 167 Mass., 92 (106–107): "We all agree that it cannot be done by force or threats of force. We all agree, I presume, that it may be done by persuasion to leave a rival's shop and come to the defendant's. It may be done by the refusal or withdrawal of various pecuniary advantages, which, apart from this consequence, are within the defendant's lawful control. It may be done by the withdrawal, or threat to withdraw, such advantages from third persons who have a right to deal or not to deal with plaintiff, as a means of inducing them not to deal with him either as customers or servants."

Perhaps as fine an analysis and definition of the right of traders to deal or refuse to deal and to make exclusive conditions in the free struggle for commercial supremacy, will be found in the decisions of the *Mogul Steamship Co. vs. McGregor*, 23 Q. B. D., 544, s. c.: 23 L. B. D., 598, s. c.; App.

Cas., 1892, p. 25, referred to with marked approval by Mr. Justice Jackson *In re Greene*.

In that case plaintiff and defendants were owners of various steamers engaged in trade between England and the ports of Shanghai and Hankow, in China. The defendants, desiring to secure all of that trade, entered into an agreement or "conference" designed to drive the plaintiff's ships out of the trade so as to appropriate the whole of it to the conference steamers. First, it was stipulated that if outsiders should start for Hankow they were to be met by conference steamers and encountered with "effective opposition." Secondly, it was stipulated that the agents of the conference ships should be "prohibited from being interested, directly or indirectly, in outsiders;" *i. e.*, they were to be removed from the agency of defendants' ships if they took any part in the business of non-conference steamers. Thirdly, the agreement provided for a rebate of 5 per cent being made to firms which shipped exclusively by conference ships, a benefit which was to be denied if a single shipment were made by an outsider, except where there was no conference ships in port or named for dispatch within a week with available cargo space.

In the trade war which ensued, the conference won. The action was for an injunction and for damages.

Lord Coleridge, chief justice, on the trial said (21 Q. B. D., 552): "The defendants are traders with enormous sums of money embarked in their adventures, and naturally and allowably desirous to reap a profit from their trade. They have a right to push their lawful trade by all lawful means. They have a right to endeavor by lawful means to keep their trade in their own hands and by the same means to exclude others from its ben-

efits, if they can. Amongst lawful means is certainly included the inducing, by profitable offers, customers to deal with them rather than with their rivals. It follows that they may, if they think fit, endeavor to induce customers to deal with them exclusively by giving notice that only to exclusive customers will they give the advantage of their profitable offers." On appeal from a judgment for defendants, Bowen, L. J. (23 Q. B. D., 614), said: "There was here no personal intention to do any other or greater harm to the plaintiffs than such as was necessarily involved in the desire to attract to the defendants' ships the entire tea freights of the ports, a portion of which would otherwise have fallen to the plaintiff's share. I can find no authority for the doctrine that such a commercial motive deprives of 'just cause or excuse,' acts done in the course of trade which would, but for such a motive, be justifiable. So to hold would be to convert into an illegal motive the instinct of self advancement and self protection, which is the very incentive to all trade. To say that a man is to trade freely, but that he is to stop short at any act which is calculated to harm other tradesmen, and which is designed to attract business to his own shop, would be a strange and impossible counsel of perfection."

Fry, L. J. (p. 626) said: "Competition exists where two or more persons seek to possess or enjoy the same thing; it follows that the success of one must be the failure of another, and no principle of law enables us to interfere with or to moderate that success or that failure so long as it is due to mere competition. * * * * No case has been or, I believe, can be cited where the only means used by the defendant to injure the plaintiff has been competition pure and simple. I think that if we were now to hold interference by mere com-

petition unlawful, we should be laying down law both novel and at variance with that which modern legislation has shown to be the present policy of the state."

The appeal was dismissed, Lord Esher, Master of the Rolls, dissenting.

On appeal to the House of Lords, Lord Chancellor Halsbury said (App. Cas., 1892, p. 38): "What is the wrong done? What legal right has been interfered with? What coercion of the mind, or will, or of the person is effected? All are free to trade upon what terms they will and nothing has been done except in rival trading which can be supposed to interfere with appellant's interest. * * * * (p. 40) I am of opinion, therefore, that the whole matter comes round to the original proposition, whether a combinatin to trade and to offer, in respect of prices, discounts and other trade facilities, such terms as will win so large an amount of custom as to render it unprofitable for rival customers to pursue the same trade, is unlawful and I am clearly of the opinion that it is not."

Lord Bramwell (p. 47) said: "Suppose the case put in argument: In a small town there are two shops, sufficient for the wants of the neighborhood, making only a reasonable profit. They are threatened with a third. The two shopkeepers agree to warn the intending shopkeeper that if he comes they will lower the prices, and can afford it longer than he. Have they committed an indictable offense? Remember the conspiracy is the offense, and they have conspired. If he, being warned, does not set up his shop, has he a cause of action? He might prove damages. He might show by his skill he could have beaten one or both of the others. Would a ship owner who intended to send his ship to Shanghai, but desisted owing to the

defendant's agreement, and on being told by them they would deal with him as they had with plaintiff, be entitled to maintain action against the defendants? Why not? If yes, why not every shipowner who could say he had a ship fit for the trade, but was deterred from using it?"

Lord Morris said (p. 49): "The object was a lawful one. It is not illegal for a trader to aim at driving a competitor out of trade, provided the motive be his own gain, by appropriation of the trade, and the means he uses be lawful weapons. Of the first four, of the means used by the defendants, the rebates to the customers and the lowering of the freights are the same in principle, being a bonus by the defendants to customers to come and deal with them exclusively. The sending of ships to compete and the indemnifying other ships was the competition entered on by the defendants with the plaintiffs. The fifth means used, viz: the dismissal of agents, might be questionable according to the circumstances: but in the present case the agents filled an irreconcilable position in being agents for the two rivals, the plaintiffs and defendants. Dismissal under such circumstances became, perhaps, a necessary incident of the warfare in trade.

"*All the acts done, and the means used by the defendants, were acts of competition for the trade. There was nothing in the defendant's acts to disturb any existing contract of the plaintiffs, or to induce any one to break such.* Their action was aimed at making it unlikely that any one would enter into contracts with the plaintiffs, the defendants offering such competitive inducements as would probably prevent them."

All the Lords concurred in dismissing the appeal.

Toledo, etc., R. R. vs. Penn Co. et al., 54 Fed. R., 730 (738), it is said: "Ordinarily when such a combination of persons does not use violence, actual or threatened, to accomplish their purpose, it is difficult to point out with clearness the illegal means or end which makes the combination an unlawful conspiracy; for it is generally lawful for the combiners to withdraw their intercourse and its benefits from any person, and to announce their intention of doing so, and it is equally lawful for the others of their own motion to do that which the combination seek to compel them to do."

In *Manufacturer's Outlet Co. vs. Longley*, 37 A. Rep., 535, Sup. Ct. R. I., (June 23rd, 1897), it is held: "No cause of action for an injunction is stated by a bill alleging that defendants combined to induce certain publishers to refuse to publish complainant's advertisements, and to that end threatened to withdraw their advertisements if complainants were accepted."

In *American Live Stock Com. Co. vs. Chicago Live Stock Exchange*, 143 Ill., 210, it is said: "Admitting the right of complainant to embark in and prosecute the business for which it was organized freely and without improper obstruction, *it does not follow that it has the right to deal with parties who are unwilling to so deal, or to compel those who do not choose to do so, to purchase its property. Absolute freedom of commercial intercourse, to which a party may be entitled, is not interfered with by the refusal of another to deal with such party on any terms. The refusal of any or all of the members of the Exchange to purchase live stock of the complainant is merely an exercise of their clear and legal prerogative.*"

And again, "These rules, having been adopted, presumably with the approval of the members of the Exchange, there is no reason to suppose that they will not be voluntarily obeyed, *and such voluntary obedience is a matter which the courts have no power to restrain.*"

And again, "It (the Stock Yards Co.) would doubtless be held bound to keep its market open alike to all who might desire to do business therein, and perhaps to make no discrimination between individuals. But it does not follow, that dealers resorting to said market for purposes of trade, would be subjected to similar rules of public policy. They would deal with each other merely upon the footing of private parties, owing each other no duties except those which the rules of honesty and fair dealing impose. *Each would be at liberty to deal or decline to deal with others, precisely as he saw fit.*

Nor can it be seen how combinations between merchants doing business in such public market, either with a view of increasing or diminishing competition, or of enhancing or diminishing prices, would be subjected to any rules different from those which apply to such combinations wherever made. As individual merchants, they would be subjected in their dealings with each other to no peculiar rules of public policy growing out of the fact that such dealings were in a public market, *and an agreement between any number of them not to deal with any particular person, or class of persons, would not, of itself, subject them to such rules.*"

In *Macauly vs. Tierney*, 33 Atl. Rep., 1-4, it is said: "It was perfectly competent for the members of the association, in the legitimate exercise of their own business, to bestow their patronage on whomsoever they chose, and to annex any condi-

tion which they saw fit. The wholesale dealers were free to comply with the condition or not, as they saw fit. If they valued the patronage of the members more than that of the non-members, they would doubtless comply; otherwise, not."

In *Dueber Watch Co. vs. Howard Watch Co.*, 14 C. C. A., 14 (S. C., 66 Fed., 637) it is said (p. 23): "It is difficult to see wherein the agreement complained of is injurious to the public. Certainly it is not one in general restraint of trade. It seems to be a reasonable business device to increase the trade of one set of competitors at the expense, no doubt, of their business rivals, who are equally free to avail themselves of similar devices to secure their own trade. As such, it is not obnoxious to the statute. The agreements or contracts complained of, being not unlawful, the giving notice to the world of their existence is no offence."

Hunt vs. Simonds, 19 Mo., 583.

In *U. S. vs. Addyston Pipe Co.*, 78 Fed., 712, it is said (p. 722): "Federal authority exists only when a monopoly or a contract in restraint of trade assumes such form or has such effect as to go beyond any common law conception of these terms, and interferes directly and substantially with inter-state commerce, or commerce with foreign nations; and this it must do directly and not incidentally; nor does the mode in which the association conducts its business have any direct relation to inter-state commerce."

In re Hachler, 149 N. Y., 414.
Board of Trade vs. Nelson, 162 Ill., 431.
People vs. N. Y. Commercial Assn., 18 Abb. Pr., 271.

Dickinson vs. Chamber of Commerce, 29 Wis., 45.
Jackson vs. Live Stock Exchange, 68 N. W., 1051.
Thomas vs. Musical Union, 121 N. Y., 45.
Arthur vs. Oakes, 63 Fed., 310.
U. S. vs. Cassidy, 67 Fed., 698.
Cole vs. Murphy, 158 Pa. St., 420 (431).

In the case of *Bohn Mnfg. Co. vs. Hollis*, 54 Minn., 223, where the exact matters here considered are ably and comprehensively discussed, the court, speaking by Judge Mitchell, said (p. 231): "This is the age of associations and unions, in all departments of labor and business, for purposes of mutual benefit and protection. Confined to proper limits, both as to ends and means, they are not only lawful but laudable. Carried beyond those limits, they are liable to be dangerous agencies for wrong and oppression. Beyond what limits these associations and combinations cannot go, without interfering with the legal rights of others, is the problem which, in various phases, the courts will doubtless be frequently called to pass upon. There is perhaps danger that, influenced by such terms of elusive meaning as 'monopolies,' 'trusts,' 'boycotts,' 'strikes,' and the like, they may be led to transcend the limits of their jurisdiction, and, like the court of King's Bench, in *Boggs' Case*, 11 Coke, 93*a*, assume that, on general principles, they have authority to correct or reform everything which they may deem wrong, or, as Lord Ellsmere puts it, 'to manage the state.'" (p. 233) "By the provisions of the by-laws, if they (defendants) traded with the plaintiff, they were liable to be expelled; but this simply meant to

cease to be members. It was wholly a matter of their own free choice which they preferred—to trade with plaintiff or continue members of the association."

(Id.) "If an act be lawful—one that the party has a legal right to do—the fact that he may be actuated by an improper motive does not render it unlawful. As said in one case, 'the exercise by one man of a legal right cannot be legal wrong to another;' or, as expressed in another case, 'malicious motives may make a bad case worse, but they cannot make that wrong which, in its own essence, is lawful."

(Page 234, par. 5) "It is properly lawful for any man (*unless under contract obligation, or unless his employment charges him with a public duty*) to refuse to work for or deal with any man or class of men, as he sees fit. This doctrine is founded on the fundamental right of every man to conduct his own business in his own way, subject only to the condition that he does not interfere with the legal rights of others. * * * This has been repeatedly held in regard to associations or unions of workmen, and associations of men in other occupations must be governed by the same principles."

In *Deuber Watch Case Mfg. Co. vs E. Howard Watch Co.*, 55 Fed., 851, District Judge Coxe sustaining a demurrer, said (853): "Is it an illegal act, within the provisions of the law in question for two or more traders to agree among themselves that they will not deal with those who prefer to purchase the goods of another designated trader in the same business? Many perfectly legitimate reasons might be suggested for such an agreement. * * * The plaintiff was perfectly free to engage in every branch of the watch mak-

ing business. So were all others. The plaintiff's customers were free to purchase of the plaintiff, of the defendants, or of any other manufacturer. * * * The construction contended for by the plaintiff would render each of the defendants liable to indictment not only, but would make unlawful almost every combination by which trade and commerce seek to extend their influence and enlarge their profits. It would extend to every agreement where A and B agree that they will not sell goods to those who buy of C. It would strike at all agreements by which honest enterprise attempts to protect itself against ruinous and dishonest competition."

On this question, affirming the judgment below (S. C., 66 Fed., 637) the Court of Appeals, by Judge Lacombe said (645): "An individual manufacturer or trader may surely buy from and sell to whom he pleases and may equally refuse to buy from or sell to anyone with whom he thinks it will promote his business interests to refuse to trade. That is entirely a matter of his private concern, with which governmental paternalism has not as yet sought to interfere, except when the property he owns is devoted to a use in which the public has an interest. * * * Certainly there is nothing unlawful or unfair in the statement to the trade by the maker of any kind of merchandise: 'My goods are for sale only to those who buy of me exclusively, not to others.' * * * Nor can it be claimed that such an agreement between sellers who represent but a part of the trade is injurious to the public, which has all of the rest of the trade to deal with."

In *Hopkins vs. Oxley Stave Co.*, (U. S. C. C. A., eighth circuit, not reported) the court said:

"The courts have invariably upheld the right of individuals to form labor organizations for the protection of the interest of the laboring classes, and have denied the power to enjoin members of such associations from withdrawing peaceably from any service, either singly or in a body, even when such withdrawal involves a breach of contract. (*Arthur vs. Oakes*, 63 Fed. Rep., 310)." The above was not reported at the time of preparing this brief. The court there divided, not on the law, but on the fact of whether intimidation had been resorted to.

Judge Caldwell, dissenting, in an able and learned opinion, among other things said:

"In the Mogul Steamship case Lord Coleridge said it was the resolute purpose of the defendants 'to exclude the plaintiffs if they could, and to do so without any consideration of the results to the plaintiffs if they were successfully excluded. This, I think, is made out, and I think no more is made out than this. Is this enough? It must be remembered that all trade is in a sense selfish; trade not being infinite; nay, the trade of a particular place or district being possibly very limited—what one man gains another loses. In the hand-to-hand war of commerce * * * men fight on without much thought of others, except a desire to excel or defeat them;' and the learned judge held that plaintiff could have no redress from their losses—they were losses incident to competition in business."

The facts in the last cited case were entirely dissimilar to those in this. Jurisdiction of the Federal courts existed on the same general ground that gives them cognizance of ordinary civil controversies between citizens of different states; no question of inter-state commerce or of the application of federal law arose; but in so far as concerns

the general and inherent right of men engaged in trade to do the acts here prohibited, the law as held by all the judges is declared as we here contend for it.

It will be borne in mind that no attempt to control either supply or prices is charged; and the comparatively small percentage of the cattle which appellants and their competitors aspire to handle, as shown by both parties, as well as the terms of the decree, prove that the injunction did not proceed upon the idea that appellants were attempting to absorb the traffic. Indeed, the bill is grounded upon the first section of the Act of July 2nd, 1890, (Rec. p. 9), and no issue of monopoly or attempt to monopolize, as defined in the second section, is tendered.

"*A contract does not restrict the sale of a commodity, which does not look toward withholding the supply from the market, nor to enhancing the price.*"

Central Shade Roller Co. vs. Cushman, 143 Mass., 353 (363).

(c). "*The same test cannot be applied to the acts, contracts and combinations of private traders, as should be to public corporations, such as railroads.*

We have already pointed out that the assumption of the bill and decree, which, in our view, aside from the character of the trade, constitutes the fundamental error of both, is that appellants owed the duty to the rival body of traders to deal with them and their patrons, and not to discriminate. Speaking to this precise point, this court by Mr. Justice Peckham, in the *Trans-Missouri Freight Case*, 166 U. S., 290, pointed out, with

great force and clearness, this error; and in drawing the plain line of distinction between those who owed a public duty and those who did not, sustained the inherent natural right of the private trader to do every act and make every agreement, from the doing or making which the appellants are, by this decree, restrained.

The court said:

(312). "Railroad companies are instruments of commerce, and their business is commerce itself." * * *

(313). "To exclude agreements as to rates by competing railroads for the transportation of articles of commerce between the states would leave little for the act to take effect upon."

(320). "The trader or manufacturer, on the other hand, carries on an entirely private business, *and can sell to whom he pleases*; he may charge different prices for the same article to different individuals; he may charge as much as he can get for the article in which he deals, whether the price be reasonable or unreasonable; *he may make such discrimination in his business as he chooses, and he may cease to do any business whenever his choice lies in that direction.*"

(322) "*The (railroad) company may not charge unreasonable prices for transportation, nor can it make unjust discriminations, nor select its patrons, nor go out of business when it chooses, while a mere trading or manufacturing company may do all these things.*"

(336) The language of Judge Shiras, of the Court of Appeals, is quoted with approval when he says:

"By reason of this marked distinction existing between enterprises inherently public in their

character and those of a private nature, and further by reason of the difference between private persons and corporations engaged in private pursuits, who owe no direct or primary duty to the public, and public corporations created for the express purpose of carrying on public enterprises, and which, in consideration of the public powers exercised in their behalf, are under obligations to carry on the work intrusted to their management primarily in the interest and for the benefit of the community, it seems clear to me that the same test is not applicable to both classes of business and corporations in determining the validity of contracts and combinations entered into by those engaged therein."

(326) "It is readily seen from these cases that if the act do not apply to the transportation of commodities by railroads from one state to another or to foreign nations, its application is so greatly limited that the whole act might as well be held inoperative"—referring to *Kidd vs. Pearson* and *E. C. Knights* case. It will also be readily seen from these cases, as well as the one in which the last quoted comment is made, that the theory of the bill and of the decree, which involves sustaining the jurisdiction of the federal government and its courts to control, regulate, reform, correct and manage from the bench all business and trade associations and exchanges, of the same general character as the Traders Live Stock Exchange—has invariably received the pointed condemnation of this court.

It remains to consider the points of the decree wherein appellants are "enjoined from enforcing, recognizing or acting under" their rules Ten (10), Eleven (11), Twelve (12) and Thirteen (13).

(1) Rule Ten (Rec. p. 34, Specification VII)

is: "This Exchange will not recognize any yard trader unless he is a member of the Traders Live Stock Exchange."

(2) Rule Eleven (Rec. p. 35, Specification VIII) is: "When there are two or more parties trading together as partners, they shall each and all of them be members of this Exchange." That is, clearly, if one member of a partnership desires to become a member of the Exchange, all of his partners must do so, otherwise he is not eligible: all must become members or none.

(3) Rule Twelve, amended (Record p. 30, Specification IX) is: "No member of this Exchange shall employ any person to buy or sell cattle, unless such person hold a certificate of membership in this Exchange."

These three rules, constituting elements of an agreement voluntarily entered into by appellants, were evidently designed to encourage all persons engaged in the same occupation, who believed in the purposes of the preamble (Rec. p. 32) to become members, or, as was stated (id.) by the president of appellant Exchange, "it was meant and intended that those yard traders who did not approve of the objects of the association, and of concerted action to obtain them, might go their independent way, but the Exchange would not countenance them nor be responsible for their methods." It resulted, naturally enough, that some refused to join and two parties formed, one friendly and the other hostile to the organization. Those who refused to join unquestionably had that right, and some of them acted wisely, as it appears (Rec. p. 30) that they probably could not have remained members, and certainly could not unless they altered their methods of operation.

It was thought and is contended on behalf of appellants, that being a voluntary association of men engaged in private trade, they owe no duty to any yard trader to recognize him; that they have a lawful right, each in attending to his own business, to recognize whom they please, and may "select their patrons," and may wholly or partly "cease to do any business when their choice lies in that direction;" and that they could exercise these rights without being guilty of restraining inter-state commerce, within the meaning of the penal act under which they are charged.

But the court, by enjoining them from "enforcing or recognizing or *acting under*" Rule 10, virtually commands them to "recognize" the other yard traders, that is, presumably, deal and trade with them, whether appellants wanted to do so or not, and holds the rule an agreement within the prohibition of the statute, and "acting under" it a restraint on inter-state commerce.

It was thought and is contended that this voluntary association of traders had the right to prescribe among themselves such conditions of eligibility to membership as they pleased, and as might be acceded to by those joining; that they were not bound to number among their members any person whose business partnership and possible business interest might lead him to act in hostility to the purposes and interests of the association; that they were not bound to extend the privilege of membership to one who might, through the medium of his partners, not members, conduct business in a manner not admitted as proper or honorable by the rules of the Exchange; that they owed no duty to admit anybody to membership except such as they chose; that any yard trader was left to his free choice of joining under the conditions or not; and finally, that they could impose

the condition of membership contained in Rule 11, without being guilty of a violation of the statute.

But the court decreed that they had no right to adopt this rule, and in doing so they entered into an agreement in restraint of inter-state commerce.

It was thought, and is contended, that the appellants, being private traders, each had a right in the conduct of his own business to employ anybody or nobody as he pleased; that he was not bound and did not owe the duty, as a matter of law, to employ anybody; that he could employ whom he pleased; that he had a right to agree with his associates to employ as buyer or salesman only members; that appellants were not bound, as a matter of law, if any of them employed a buyer or salesman, to take an outsider as such employee, who might be inimical to the interests and purposes sought to be promoted by the association, and friendly to, or even of the number of, its enemies; and finally, that in agreeing not to do this they deprived no one of any right and were not guilty of violating the statute.

But the court held that this agreement made them guilty, and enjoined them from "enforcing *or recognizing or acting under*" this rule; which seems logically tantamount to *a command not to employ anyone except non-members.* Doubtless this was not intended, but the strenuous terms of the decree show that the court felt that the law required and could compel these traders, each and all, to conduct their private business "the same as if such traders' association did not exist," and that the superintending authority to see that each member did this, was vested in the court by the Act of July 2nd, 1890. These rules are put under the ban, evidently, from the same basic and fundamentally erroneous conception, to which we

have referred and which permeates the whole decree, that peaceable discrimination by free choice in favor of a fellow member is a wrong instead of a right; that each member owes the duty to every rival trader not to withhold his patronage from that rival, or from anyone else who would thereby be induced to take his custom away from the rival and bestow it on such member. This is denied by the warrant of the reasons and authorities heretofore cited, and by many others, the citation of which might emphasize, but could not strengthen the positions assumed by appellants in this controversy. If the circuit court was right, then every member of every religious, fraternal or benevolent association, every member of every trades union and business association, who bestowed his patronage on his brother, *because* he was his brother, would be a violator of the statute, provided the dealing concerned the purchase of an imported article of commerce.

(4) Rule 13 (Rec. 35, Specification X) deserves separate notice. It reads: "*No member of this Exchange shall be allowed to pay any order buyer or salesman any sum of money as a fee for buying cattle from or selling cattle to such party.*"

In support of this rule we cite the authority of the Bible and the code of morality. It is a rule against bribery. That is its full scope and purport. Its terms are plain and free from any ambiguity. Its legality is not assailed anywhere in the record, except in the decree, nor specifically defended anywhere, except in the Assignment of errors. The record, however, discloses abundantly the facts which make its explanation and application easy to appreciate. It will be borne in mind that the trader is, alternately, a buyer and

seller on his own account, and when he has cattle to sell the "order buyer" is his customer. The latter, as his designation indicates, has orders to buy on the market for his principal, whose money he spends when buying. The trader offers to sell at a certain price, and when he accompanies it with a fee as an inducement to the agent to pay the price (with his absent prinicpal's money) he is guilty of the villainy which the rule prohibits. The agent, whose duty it was to buy at the best price possible, is thus bribed to pay the price asked. Reverse it. The trader is a buyer on the local market and customer of the salesman, who, this time as a selling agent, represents the shipper. The trader offers a price lower, of course, than that asked, and if he bribes the agent of the absent and ignorant owner to sell at the lower price, the second offense condemned by the rule is committed. The salesman, whose duty it was to sell for the best price obtainable, has his bribe in his pocket, and no one is robbed except the shipper.

It cannot be that the able and upright Judge who enjoined appellants from "enforcing or recognizing *or acting under*" this rule, understood it; and it may be that error in the decree in this respect will be confessed.

III.

The decree is violative of the rights secured by the Fifth Amendment to the Constitution of the United States forbidding that any person be deprived of liberty or property without due process of law; and if the act of July 2nd, 1890, is correctly construed by the Circuit Court, it is itself violative of said amendment.

It will be understood that the contention is not that the statute is unconstitutional, but that

if the acts and agreements of the appellants constitute in fact a violation of the statute within its true meaning, then it is unconstitutional, because the right to do those acts and agree to those rules of association is a right which, under the constitution, it is beyond the power of the Federal government to take away. It will be borne in mind also that the appellants, "and each and every of them," are enjoined from doing said acts or "enforcing, recognizing or acting under" any of the proscribed rules. A contempt of the decree, therefore, would be a matter of individual guilt. To charge or establish an offense against the statute, the acts and facts must be the same, whether the proceeding be by bill in equity, as here, or by indictment; acts and facts which, within the meaning of the law, constitute guilt are essential to sustain either proceeding.

According, then, to the interpretation put upon the statute by the Circuit Court, these results must follow:

(*a*) If a member refuses to recognize a yard trader who is not a member—that is, refuses to deal or negotiate with such party because a non-member—he is guilty of contempt of court, and also may be indicted, convicted and punished for restraining inter-state commerce. (Rule 10).

(*b*) If he agrees with his associates upon the qualification for membership, that no individual of a firm can become a member unless all do, or if he joins in rejecting an application for membership because the party is ineligible under this rule, he is, in either case, guilty. (Rule 11).

(*c*) If he employs a fellow member to buy or sell cattle for him, and the reason resident in his

mind for so doing is that the employee is a member, he is guilty. (Rule 12).

(*d*) If he refuses to employ a non-member as buyer or salesman, and such refusal is due to the fact that the party is a non-member, he is guilty.

(*e*) If he joins in enforcing, or recognizes or acts under Rule 13, forbidding bribery of the agent of the other party to a trade, he is guilty. (This is doubtless a mistake but is part of the decree).

(*f*) If he joins in enforcing any of these rules against any of his fellow members who have agreed to and violated them, he has offended and is guilty.

(*g*) If, in his dealings, he in any way discriminates in favor of a fellow member because of their association, or against anyone not a member for the reason that he is not a member, whether by peaceful bestowal of favors and custom on his brother, or the withholding of the same from those hostile to the Exchange or otherwise; or if he withholds his custom from any commission merchant, for the reason that such merchant patronizes non-members of the Exchange, leaving the merchant to his free choice of enjoying the custom of whichever he prefers—in any such case he is a criminal.

In the foregoing hypotheses we have sought to state with accuracy every essential act and fact which in the estimation of the circuit court would constitute a restraint of inter-state commerce and a consequent violation of the statute on the part of appellants. It has been seen that in the view taken, when the offence consists of discrimination in

dealing, or employing men, a necessary ingredient of the crime, is a particular reason for the act of discrimination. We mention it again solely for the purpose of pointing out, that a recognition of the existence of the *power* in the courts or in congress to declare an act of discrimination by a private trader criminal, when done for a particular reason, though innocent and even praiseworthy if the same act be done for some other reason, must carry with it the recognition of the power in one or the other branch of the government to declare that act criminal when done for any other reason obnoxious to the notions of judge or legislator.

"Questions of power," says Chief Justice Marshall, in *Brown vs. Maryland*, "do not depend upon the degree to which it may be exercised. If it may be exercised at all, it must be exercised at the will of those in whose hands it is placed."

Under the theory of this decree, the natural right of a person following his private occupation "to select his patrons," to make such discriminations by way of withholding or bestowing patronage as he may deem best for his own interest, to employ whom he pleases, to "refuse to deal," and cease to do business "when his choice lies in that direction"—that right is subject in its exercise to control, regulation, abridgement or destruction at the will of congress. We deny it.

We affirm, on the contrary, that the right of the appellants to do each and all of the things which they are forbidden to do, and to refuse to do those things which they are enjoined from refusing to do, is covered by the protecting shield of the constitution, and stands beyond the rightful reach of the legislative or judicial hand.

It should be observed that there is no question here of criminal combination or conspiracy, except as it may be made so by this statute; no claim in

the bill of the existence of facts constituting common law conspiracy; no violence, intimidation, combination to compel others to break contract relations, or any threats of such; nothing, in short, like "combining to do an unlawful act, or a lawful act by unlawful means," according to the universsably accepted rules of the common law. Consequently, if the acts and agreements enumerated and adjudged to be violations of the act of July 2nd, 1890, are in truth so, within the meaning and intent of that statute, it must be because they were thereby first made *mala prohibita*; they were not crimes before. This cannot be done without depriving appellants of liberty or property without due process of law.

1. *The right to be untrammeled and unmolested in the conduct of their private business, so long as they do not interfere with the equal rights of others, is a part of that constitutional liberty.*

In *Munn vs. Illinois*, 94 U. S., 123, Mr. Chief Justice Waite said: "It (the constitutional provision in question) is found in Magna Charta, and in substance, if not in form, in nearly or quite all the constitutions that have been adopted from time to time by the several states of the Union. By the fifth amendment it was introduced into the constitution of the United States as a limitation upon the powers of the national government, and by the fourteenth as a guaranty against any encroachment upon an acknowledged right of citizenship by the legislature of the states."

This word "liberty" as it occurs, sometimes in state constitutions, and in the fifth amendment, limiting federal power, and in the fourteenth, guarding and guaranteeing it against possible encroachments by local legislation, has been

defined with great unanimity, and jealously defended with almost equal vigilance by the supreme state and federal courts. It will be sufficient for the purposes of this contention to cite and quote briefly from a few of many of these decisions.

In *Kuhn vs. Common Council*, 70 Mich., 534 (537), the court said: "The right to contract a debt or other personal obligation is included in the right to liberty; and the right to contract a debt, or to enter into a bond or other writing obligatory, is also a right of property"—this in a case where a city enactment made a liquor dealer incompetent to sign as surety the bond of another liquor dealer.

In *State vs. Goodwill*, 33 W. Va., 179 (183), it is said: "It is equally an encroachment, both upon the just liberty and rights of the workman and his employer, or those who might be disposed to employ him, for the legislature to interfere with the freedom of the contract between them, as such interference hinders the one from working at what he thinks proper, *and at the same time prevents the other from employing whom he chooses.*"

(Id.) "The avocation of an employer, as well as that of his employe, is his property. Depriving the owner of property of one of its attributes is depriving him of his property, under the provisions of the constitution. The right to use, buy, and sell property and contract with reference thereto, including contracts for labor—which is, as we have seen, property—is protected by the constitution."

In *Godcharles vs. Wigeman*, 113 Pa. St., 431, the court held certain sections of the act un-

der consideration unconstitutional and void, "inasmuch as by them an attempt has been made by the legislature to do what, in this country, cannot be done; that is, prevent persons who are *sui juris* from making their own contracts. The act is an infringement alike of the rights of the employer and of the employe; more than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal, and any and every law that propose to prevent his doing so, is an infringement of his constitutional privileges, and consequently vicious and void."

In *State vs. Loomis*, 115 Mo., 307, Chief Justice Black, speaking for the court, said (p. 316): "Liberty, as we have seen, includes the right to contract as others may; and to take that right away from a class of persons following lawful pursuits, is simply depriving such persons of a time-honored right which the constitution undertakes to secure to every citizen."

In *Ritchie vs. The People*, 155 Ill., 108, Mr. Justice Magruder, speaking for the court, said (104): "The privilege of contracting is both a liberty and property right. Liberty includes the right to acquire property, and that means and includes the right to make and enforce contracts. The right to use, buy, and sell property and contract in respect thereto, is protected by the constitution."

(Id. p. 108) "But aside from its partial and discriminating character, this enactment is a purely arbitrary restriction upon the fundamental right of the

citizen to control his or her own time and faculties. It substitutes the judgment of the legislature for the judgment of the employer and employee in a matter about which they are competent to contract with each other. It assumes to dictate to what extent the capacity to labor may be exercised by the employee, and takes away the right of private judgment as to the amount and duration of the labor to be put forth in a specified period." The above, where by a statute of Illinois, women were prohibited from being employed to work or from working more than a specified number of hours per day or week.

In re Jacobs, 98 N. Y. 98, it is stated (p. 105): "It is plain, therefore, that this law interferes with the profitable and free use of his property by the owner or lessee of a tenement house who is a cigar-maker, and trammels him in the application of his industry and the disposition of his labor, and thus, in a strictly legitimate sense, it arbitrarily deprives him of his property, and of some portion of his personal liberty."

(Id. p. 106) "So, too, one may be deprived of his liberty and his constitutional rights thereto violated without the actual imprisonment or restraint of his person. Liberty in its broad sense, as understood in this country, is not only freedom from actual servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling and to pursue any lawful trade or avocation. All laws, therefore, which impair or trammel these rights, which limit one in his own choice of a trade or profession, or confine him to work or live in a specified locality, or exclude him from his own house, or restrain his otherwise lawful movements (ex-

cept such as may be passed in the exercise by the legislature of the police power, which will be noticed later) are infringements upon his fundamental rights of liberty, which are under constitutional protection."

In *People vs. Gillson*, 109 N. Y., 389, the court, speaking by Judge Peckham, said (99): "It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited, or destroyed by the legislation under consideration. *It is evidently of that kind which has been so frequent of late, a kind which is meant to protect some class in the community against the fair, free and full competition of some other class, the members of the former class thinking it impossible to hold their own against such competition, and, therefore, flying to the legislature to secure some enactment which shall operate favorably to them or unfavorably to their competitors, in the commercial, agricultural, manufacturing or producing fields.* * * * A person engaged as a retailer of coffee might very well think that he could greatly enlarge the amount of his trade by doing precisely what was done by the defendant in this case, and that while his profits on the same amount of coffee would be smaller than if he gave no present, yet by the growth of his trade his income at the end of the year would be more than by the old method. This statute, if valid, steps in to prevent his adopting such a course to procure trade, and from it to secure an income and livelihood for himself and family. He is thus restrained in the free enjoyment of his faculties, which he ought to have the right and liberty to use in the way of creating or adopting plans for the increased growth of his trade, business or occupation, unless such restraint is necessary for the common welfare * * *

(*Id.* 400). That power (the police power) has never yet been fully described, nor its extent plainly limited, further, at least, than this: It is not above the constitution, but it is bounded by its provisions; *and if any liberty or franchise is expressly protected by any constitutional provision it cannot be destroyed by any valid exercise by the legislature or executive of the police power.*"

(Page 401) "I refer to that case (*In re Jacobs*, *supra*), as authority for the statement that the legislature cannot, without reason and arbitrarily, infringe upon the liberty or the property rights of any person within the protection of the constitution of this state; and that if the legislature shall determine what is a proper exercise of the police power, its decision is subject to the scrutiny of the courts."

(Page 406) "Nor can this act stand as a valid exercise of legislative power to enact what shall amount to a crime. The power of the legislature to so declare is exceedingly large, and it is difficult to define its exact limit. * * * The power has been unlawfully exercised in this instance for the same reasons we have already stated, because it violates the constitutional provision which secures to each person in this state his liberty and property, except as he shall be deprived of one or both by due process of law."

Judge Cooley (6th Ed. Constitutional Limitations, p. 475) says: "The right of every man to do what he will with his own, not interfering with the reciprocal rights of others, is accepted among the fundamentals of our law."

In *Munn vs. Illinois*, 94 U. S., 142, Mr. Justice Field gave a definition of the term "liberty,"

as used in the constitutional provision, which, though in a dissenting opinion, in no wise conflicted with the expressed views of the majority of the court: "By the term liberty, as used in the provision, something more is meant than mere freedom from physical restraint or the bounds of a prison. It means freedom to go where one may choose, and to act in such manner, not inconsistent with the equal rights of others, as his judgment may dictate for the promotion of his happiness."

In *Caldwell vs. Texas*, 137 U. S., 697, Chief Justice Fuller, speaking for the court, says: "Due process is so secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice." The plain converse of which is that any decree or statute which subjects the individual to such exercise of power, in violation of those "established principles of private right," is not "due process of law."

Mr. Justice Miller, in *Pumpelly vs. Green Bay Co.*, 13 Wall., 177, speaks of a constitutional provision "*as placing the just principles of the common law on that subject beyond the power of ordinary legislation to control them*," and as having "*always been understood to have been adopted for protection and security to the rights of the individual against the government.*"

In *Allgeyer vs. Louisiana*, 165 U. S., 578 (588), the court, by Mr. Justice Peckham, said: "It is natural that the state court should have remarked that there is in this 'statute an apparent interference with the liberty of defendants in restricting their rights to place insurance on property of their

own whenever and in what company they desired.' Such interference is not only apparent, but it is real."

After referring to the holding of the state Supreme Court that there was no such interference and the statute was valid and had been violated, the justice said: "As so construed, we think the statute is a violation of the federal constitution, in that it deprives the defendants of their liberty without due process of law. The statute which forbids such act does not become due process of law because it is inconsistent with the provisions of the constitution of the union. The liberty mentioned in that amendment means not only the right of the citizen to be free from the mree physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

The uniformity of doctrine with which the courts uphold the rights and liberty of the citizen under this constitutional provision, the brief but comprehensive recognition by this court in the *Trans-Missouri Freight* case, construing this very act, that almost every right here claimed still exists, can lead to but one conclusion: That the liberty of the appellants, within the meaning of the amendment, is by this decree stricken down "without due process of law."

2. *Appellants are deprived of "property" by*

the decree, or by the statute, if it means what the circuit court construed it to mean.

In a broad but real sense, as the cases show, the privilege of the citizen to be free to follow his vocation unmolested, and "to employ his faculties in all lawful ways" for the improvement of his condition, is itself property. But in a more literal, if not more important, sense membership in a business exchange is, and has been adjudged to be, property of a most valuable character. Since the patent purpose of this decree, as its concluding words import, is to compel traffic to be carried on at this market "the same as if said traders' association did not exist," it is manifest that the value of membership must be destroyed, and that the principle upon which this adjudication proceeds would, if applied, annihilate millions of dollars' worth of property rights in business exchanges of a similar kind throughout the United States. It is not the purpose to discuss this matter further. To do so would be superfluous, and the attempt inadequate, in view of the full and valuable information on the subject furnished the court, with such unexampled research and accuracy, by counsel in their brief for appellants in the cognate case of *Hopkins vs. United States*, now pending for hearing. We simply call attention to the fact that by the decree, or by the statute, if correctly construed in the decree, valuable rights of property are destroyed without due process of law.

3. *The rights here claimed of liberty and property are not inconsistent with the equal or reciprocal rights of others, and are, therefore, within the protection of the constitutional provision.*

From what has been said and cited under the

second point, and so far under the third, the soundness of this proposition is apparent. The exchange is a *voluntary association*, and the members adopted the plans indicated by its rules *for the government of their own conduct in private trade*, and not for the government of the conduct of anybody else. These members are free to submit to the discipline of the organization, or to decline to do so, and withdraw and adopt the course of the rival unorganized class. If they choose to follow the rules agreed upon in the disposal of their personal patronage and custom, that is the inherent right of each, and does not interfere with the equal rights of others to deal when and where they choose. Those not members are free and have an equal right to form a voluntary association of their own or not; to deal or trade with whom they please; to refuse to deal for any reason satisfactory to themselves; and, in short, to make such discrimination in the unrestricted disposal of their trade as they see fit, without being accountable to the government, for the reason which actuates them in doing these things. The commission merchant, alternately selling to and buying from the trader, is likewise exempt from trammel and restriction in the exercise of his choice in dealing. If, by the independent action of members or non-members of this Exchange, he cannot have the trade of both, but must take his choice between them, he will naturally solicit the trade which, in his judgment, is most desirable and profitable to himself and those he represents. He is not entitled, as matter of law, to the trade of either class.

Without this decree, all these three classes of citizens engaged in business on this market have their "liberty" within the meaning of the constitution as uniformly construed; but the decree

steps in, and its mandate says, in effect, to the appellants and each of them: "You shall not adopt the plan of organization nor deal in your own unbridled discretion, for thereby you gain an advantage over your trade rival, and it eventuates that you prosper more than he does—it results that others whose trade both you and he solicit prefer to deal with you, and this cannot be tolerated."

Was it ever so held in the Republic before? To paraphrase the apt language of the supreme court of New York in *Gillson's case*, the decree protects one class of traders "from the fair, free and full competition" of another class; "the members of the former class thinking it impossible to hold their own against such competition," fly to the law officers of the government to secure a decree of injunction, "which shall operate favorably to them, or unfavorably to their competitors, in the commercial field."

4. *What the federal government may do as to inter-state traders, the local government may do as to local traders.*

The "liberty" of the fifth amendment is the "liberty" of the fourteenth and of the state constitutions. Individual rights in the conduct of domestic commerce are as much within the grasp of the power of state legislation as those rights in the conduct of inter-state commerce are within the power of congress. If the theory of this decree is a sound construction of the statute, then it is competent for the local legislature in the same way to regulate and control the private dealings of those engaged in internal trade; and by force of national and state authority together, "discrimination," or free choice in trading, is permanently enrolled in the catalogue of crimes. Members of labor organ-

izations, whose right to make a brother's cause their own, and separately or together "to cease to do any business when their choice lies in that direction" has always been fully recognized by the courts, so long as they themselves recognized the equal right of the employer "to select his patrons" and employ whom he chooses; members of the various industrial, social, religious, fraternal and other of the multitudinous associations which so much abound—when their favor is given "because of such membership," sought and refused "because of such non-membership"—may find in the omnipotence of this power to create a crime out of a reason, the destruction of their liberty for any reason which the caprice of the law making mind may suggest.

We are confident that the principle will not be sustained which, in its logical scope, would subject industrial millions to "legislative tutelage," big with the power of oppression, and to "governmental paternalism," most enervating and destructive to individual enterprise; and that constitutional rights of action, hitherto unchallenged, will not be put under the control of judicial leading-strings, to be pulled at the discretion of the *nisi prius* courts of the country.

(All italics used are ours).

RECAPITULATION.

These points, it is submitted, are established by reason and authority:

1. That appellants are not engaged in interstate but local trade, and the character of their association it is not within the jurisdiction of the federal courts to consider in this proceeding.

2. That regardless of the trade engaged in, whether inter-state or local, the acts which they are enjoined from doing do not, and could not, in their nature, restrain inter-state commerce within the meaning of the statute.

3. That the agreements or rules which appellants are enjoined from enforcing, recognizing or acting under do not render the exchange a combination, agreement or conspiracy in restraint of inter-state commerce within the meaning of the statute, and are of concern only to the members and not to their competitors or to the public.

4. That the appellants, and each of them, have the inherent right to do what is forbidden by the decree, and to refuse to do what the decree in effect commands.

5. That the decree deprives appellants of liberty and property without due process of law, and if it correctly construes the Act of July 2nd, 1890, that statute is unconstitutional.

IV.

It follows that, for the errors specified, the decree should be reversed and the cause remanded, with directions to the circuit court to dismiss the bill.

R. E. BALL,
With whom are I. P. RYLAND and
JOHN L. PEAK,
Solicitors for Appellants.

No. 479. 181.

Brief of Atty. Gen'l (Richards) for United States.

Filed Feb. 17, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

J. C. ANDERSON, ET AL., v. THE UNITED STATES. } No. 479.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The Kansas City Stock Yards Company is a corporation owning the Kansas City stock yards. The land devoted to stock-yard purposes consists of 160 acres, and is situate on both sides of the line between the States of Missouri and Kansas. The Kansas City Stock Yards Company owns an office building which is so located that about one-half thereof is in each of the States of Missouri and Kansas. The land owned by the said stock-yards company consists of yards, pens, chutes, railway

tracks, sheds, scales, buildings, and other means and appliances for receiving, yarding, feeding, purchasing, selling, and shipping cattle and other live stock.

The market at Kansas City is the second largest live-stock market in the world. The cattle received at these stock yards for several years past have exceeded 1,800,000 head of cattle annually. These cattle are shipped to the Kansas City stock yards from the States of Kansas, Nebraska, Colorado, Texas, Missouri, Iowa, and Arkansas, the Indian Territory, and the Territories of Oklahoma, Arizona, and New Mexico. These cattle so shipped and received at the Kansas City stock yards consist of the various classes of cattle, as follows:

First, those that are intended for exportation to the European markets; second, those that are intended for the Eastern markets at St. Louis, Chicago, Buffalo, New York, and other cities in the East; third, of those that are called "packers" and are intended to be sold to the various packing houses located at Kansas City; and fourth, those cattle commonly called and known as "stockers" or "feeders," and being such as are intended to be sold to farmers and to feeders from the different States and Territories, who reship them to their several places of feeding. Adjacent to these stock yards at Kansas City are the large packing houses which handle more than one-half of all the cattle received at these yards. All the cattle arriving at these stock yards are consigned to some one of the commission firms, which have offices and do business at the stock yards, by whom they are sold to the various classes of purchasers. A

large number of the cattle shipped to this market are shipped on through bills of lading to St. Louis, Chicago, and other cities in the East, with the privilege accorded to the consignor or shipper to test the market at Kansas City, and, if the prices justify, to sell thereat; and if sales are not effected, after being rested, watered, and fed, they are reshipped to the various places of destination.

The persons who buy these cattle at the Kansas City Stock Yards from the commission firms consist of the following classes of persons: First, the commission firms that have orders from their customers at other points; second, men employed by and who purchase for the packing houses located at Kansas City; third, individual farmers and feeders who come from a distance to the market and go upon the yards and buy such cattle as they need; fourth, a class of men who are known upon the yards as "speculators" or "yard traders." Some of these "speculators" or "yard traders" obtain credit from the various commission firms—that is, they make purchases for themselves, but in payment for the cattle, by an arrangement and agreement with some commission firm, they draw checks upon said commission firm, which said amounts are repaid when the cattle are sold. This last class of purchasers—that is, the "speculators" or "yard traders"—deal more particularly in that class of cattle called "stockers" or "feeders," but buy all classes of cattle received at the yards.

After having made a purchase, if there be any suited for exportation they sell them to some exporter or export them themselves. Those that are suited for the Eastern

markets they ship to said markets or sell to a commission firm that may have an order from some Eastern market for such cattle. Those that are suitable for packing are sold by these "speculators" or "yard traders" to purchasers for the packing houses, and the "stockers" or "feeders" they sell either direct to farmers and "feeders" or to some commission firm that may have an order for this class of cattle. The cattle received at the Kansas City stock yards are placed in the various pens, which are located in the State of Missouri or the State of Kansas indiscriminately, and cattle that are in pens located in the State of Kansas may be sold to purchasers who reside in Missouri and are delivered to them, and cattle located in the State of Missouri are sold to purchasers who may be located in Kansas or other States and delivered, and cattle are reshipped for export and to other markets which at the time may be located in pens in one State or located in pens in the other State, and in the traffic of these cattle at the yards they are moved back and forth from pens in Missouri to pens in Kansas and from pens in Kansas to pens in Missouri.

Prior to the month of September, 1895, there were a large number of persons engaged as "speculators" or "yard traders" at the Kansas City stock yards in these cattle. In the month of September, 1895, these appellants, numbering 143 persons, who were all "speculators" and "yard traders," organized themselves into a voluntary unincorporated association, known and designated as "The Traders' Live Stock Exchange." The government of the said exchange is vested in a board of

directors, and a president, vice-president, secretary, and treasurer. At the time of the adoption of the articles of association these appellants adopted certain rules for the government and the management of said exchange, which are found in the transcript of the record, on page 32 and following. At first a membership fee of $10 was required for each member, which was afterwards raised to the sum of $250, and on August 1, 1896, the membership fee was raised to $500. By rule 10 they bound themselves not to recognize any "yard trader" not a member of the exchange; by rule 11 they prohibited any member from forming a partnership with a person not a member of said exchange, and by rule 12 they prohibited any member of the exchange from employing any person who was not a member of said exchange.

The objects, aims, and purposes of this exchange was to drive every "speculator" and "yard trader" from the Kansas City stock yards who was not a member of said exchange. Commission firms who aided a "yard trader" or "speculator" on the market who was not a member of said association, by lending him credit, were notified to desist and cease doing business with said nonmember; and if said commission firm refused to do so they were at once boycotted by the members of this association, and none of the members would purchase any cattle held by said commission firm for sale. Where commission firms sold cattle to "speculators" or "yard traders" who were not members of this exchange, they were notified by the members of the exchange to cease making sales to "speculators" who were not members of the Traders' Live

Stock Exchange, and if they failed so to do were at once boycotted by all the members of the association, who refused to purchase, or even look at, any cattle which said commission firm might have on hand for sale. The consequence was that within a very short time every "speculator" and "yard trader" at the Kansas City stock yards was forced out of business and driven from the yards, being unable to purchase cattle from and to sell them to any person at the yards, or to obtain employment from any commission firm, or any member of the exchange, to either buy or sell cattle. These facts are all abundantly established by the affidavits filed in support of the bill, which are found in the transcript, beginning on page 12. These facts were found to be true by the judge of the circuit court of the western district of Missouri when he rendered the decree of temporary injunction, which is found on page 43 of the transcript; and these facts are also further found from the record to be true by the circuit court of appeals of the eighth circuit in certifying questions to this court. (See page 58 of the Transcript of Record.)

On the 7th day of June, 1897, the United States attorney for the western district of Missouri filed in the circuit court of the United States in the western division of the western district of Missouri, at Kansas City, a bill in equity on behalf of the United States against these appellants, which said bill is found beginning on page 5 of the transcript of the record, and charges, in effect, that the traffic in these cattle at the Kansas City stock yards was interstate commerce, and that these appellants had entered into a combination and agreement in

restraint of trade, by prohibiting other persons not members of their exchange from dealing in cattle on said yards.

The case was heard on the 1st day of July, 1897, and on July 19, 1897, the decree of temporary injunction was handed down, which is found in the transcript of record, beginning on page 43. Thereafter, an appeal was taken by the appellants to the United States circuit court of appeals for the eighth circuit, and thence brought by writ of *certiorari* to this court.

BRIEF AND ARGUMENT.

There are three questions involved in this case:

First, whether or not the cattle received at the Kansas City stock yards are the subjects of interstate commerce;

Second, whether the traffic in them at the stock yards is interstate; and

Third, whether or not the purposes, objects, aims, and conduct of the appellants is an interference with this trade.

I.

If a legislative construction of the traffic in these cattle is of any value, we suggest that as early as 1873 Congress recognized traffic in these cattle as interstate commerce, and for its regulation and control enacted laws now appearing as sections 4386, 4387, 4388, 4389, and 4390 of the Revised Statutes of the United States, requiring that all carriers of live stock should not confine the same for a longer period than twenty-eight consecutive hours without unloading the same for rest,

water, and feed for the period of at least five consecutive hours. Congress also recognized the traffic in these cattle at the Kansas City stock yards as interstate commerce in the act of May 29, 1884, First Supplement Revised Statutes, page 794; and the acts amendatory thereof provided for the inspection not only of the cattle before slaughter, but of their meat after slaughter.

In the case of the *United States* v. *Hopkins et al.* (82 Federal Reporter, p. 529) Judge Foster of the district of Kansas held that these cattle were the subjects of interstate commerce, and the traffic in them at these very yards was interstate traffic. This was a case between the United States and the Kansas City Live Stock Exchange, which was composed of the commission firms doing business at Kansas City in these same cattle.

Unquestionably, when the transportation of these cattle began from the various States and Territories to the Kansas City Stock Yards they became clothed with the quality of interstate commerce.

"It can not be denied that those who are engaged in the transportation of persons or property from one State to another are engaged in interstate commerce." (*United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290.)

"Goods become a part of interstate commerce at the time in which they commence their final movement from the State of their origin to that of their destination.

"There must be a point of time when they cease to be governed exclusively by the domestic law, and begin to

be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose in which they commence their final movement for transportation from the State of their origin to that of their destination." (*Coe* v. *Errol*, 116 U. S., 517.)

"The transportation of persons from one State into another is interstate commerce." (*N. & W. R. R. Co.* v. *Pa.*, 136 U. S., 114.)

"Beyond all question, the transportation of freight, or the subjects of commerce for the purpose of exchange or sale, is a constituent of commerce itself.

"Nor does it make any difference whether this interchange of commodities is by land or by water. In either case, the bringing of the goods from the seller to the buyer is commerce, and among the States it must have been principally by land when the Constitution was adopted." (*The P. & R. R. Co.* v. *Pa.*, 15 Wallace, 232.)

"Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced." (*Daniel Ball* v. *United States*, 10 Wallace, 557.)

"The shipment of merchandise from one State to another is interstate commerce, and any requirement of a State statute in respect to such commerce in conflict with the requirements of the interstate commerce act is unconstitutional." (*Baird* v. *St. L., I. M. and S. Ry. Co.*, 41 Federal Reporter, 592.)

"The transportation of freight and passengers from State to State is interstate commerce, and the regulation

thereof by States is forbidden by the Federal Constitution. Such commerce, whether carried on by individuals or corporations, is under the exclusive jurisdiction of Congress." (*Indiana* v. *Pullman Palace Car Co.*, 16 Federal Reporter, 193.)

Telegraphic messages passing over lines from one State to another constitute a portion of interstate commerce.

Western Union Telegraph Co. v. *James*, 162 U. S., 650.

Postal Telegraph and Cable Co. v. *Charleston*, 153 U. S., 692.

Lelout v. *Mobile*, 127 U. S., 640.

Western Union Telegraph Co. v. *Ratterman*, 127 U. S., 411.

Western Union Telegraph Co. v. *Pendleton*, 122 U. S., 327.

Western Union Telegraph Co. v. *Texas*, 105 U. S., 460.

Pensacola Telegraph Co. v. *Western Union Telegraph Co.*, 96 U. S., 1.

Western Union Telegraph Co. v. *Norman*, 77 Federal Reporter, 13.

St. Louis v. *Western Union Telegraph Co.*, 39 Federal Reporter, 59.

II.

Is the trade in these cattle at the Kansas City stock yards interstate trade? That is, these cattle being clothed with the quality of interstate commerce when their transportation began from the various States and Territories to the Kansas City stock yards, do they lose the quality of interstate commerce when reaching the

stock yards, or do they remain the subjects of interstate commerce, and the traffic in them, interstate traffic, or interstate commerce?

These cattle having once assumed the character of interstate commerce, do not lose it when they reach the Kansas City stock yards, but continue the subjects of interstate commerce until they are finally sold and become mingled with the common mass of the property in the States of Missouri or Kansas. Neither State could tax the cattle upon their arrival and being penned at the yards in pens situate in said State prior to a sale thereof.

"The right to import from one State into another carries with it by necessary implication the right of sale at the place where the importation terminates." (*Lyng* v. *Michigan*, 135 U. S., 161.)

"The power vested in Congress to regulate commerce with foreign nations and among the several States, and with the Indian tribes, is the power to prescribe the rule by which that commerce is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution. It is coextensive with the subject on which it acts, and can not be stopped at the external boundary of a State, but must enter its interior, and must be capable of authorizing the disposition of the articles which it introduces, so that they may become mingled with the common mass of property within the territory entered."

Leisy v. *Hardin*, 135 U. S., 100.
Brennan v. *The City of Titusville*, 153 U. S., 289.

The time at which commerce ceases to be interstate is not the instant when the article enters the country, but when the importer has so acted upon it that it has become incorporated in and mixed up with the mass of property in the country.

The right of importation carries with it the right to sell. (*Leisy* v. *Hardin*, 135 U. S., 166.)

A State is bound to receive and to permit the sale by the importer of any article of merchandise which Congress authorizes to be imported. (*License Cases*, 46 U. S. (5th Howard), 504.)

Not until an article has been sold does it become mingled with the common mass of property within a State, and until that time it remains interstate commerce.

The right of transportation from abroad, and of transportation from one State to another, includes by necessary implication the right of the importer to sell at the place where transportation terminates; for the very purpose and motive of that branch of commerce which consists in transportation is that other and consequent act of commerce which consists in the sale and exchange of the commodities transported.

Brown v. *Maryland*, (25 U. S. (12 Wheaton), 419.
Bowman v. *C. & N. R. R. Co.*, 125 U. S., 465.

Goods imported from foreign countries and from one State to another continue interstate commerce, and can not be taxed by the State so long as they remain the property of the importer and continue in the original form or packages in which they were imported; the right to sell without any restriction imposed by the State being

a necessary incident of the right to import. (*Coe* v. *Errol*, 116 U. S., 517.)

Foreign goods imported and sold in the original form or package do not become incorporated into the general property of the State until after a sale. (*Cook* v. *Pennsylvania*, 97 U. S., 566.)

The power which insures uniformity to commercial regulation must cover the property which is transported as an article of interstate commerce from hostile legislation until it has mingled with and become a part of the general property of the State or country. (*Welton* v. *Missouri*, 91 U. S., 275.)

It was held in *Brown* v. *Maryland* (12 Wheaton, 419) and reaffirmed in *Welton* v. *Missouri* (91 U. S., 275) that when the importer had so acted upon the thing imported it had become incorporated and mixed up with the mass of property in the country, it had lost its distinctive character as an import, and became subject to the taxing power of the State. But that while remaining the property of the importer in the original form and package, it remained interstate commerce.

Not until merchandise in the original packages is once sold by the importer does it become subject to taxation by the State. (*Waring* v. *Mobile*, 8 Wallace, 110.)

Sales by the importer are held to be exempt from State taxation, because the tax, if permitted, would intercept the import in the way to become incorporated with the general mass of property, and would deny it the privilege of becoming so incorporated until it should have contributed to the revenue of the State.

There is no difference, in effect, between the power to prohibit the sale of an article and the power to prohibit its introduction. The one would be a necessary consequence of the other. No goods would be imported if none could be sold. (*Brown* v. *Maryland*, 12 Wheaton, 419.)

In this case it was further held that when the importer had so acted upon the thing imported that it became incorporated and mixed up with the mass of property in the country, it lost its distinctive character as an import and became subject to the taxing power of the State.

The object of importation is sale.

Commerce is intercourse.

One of its most ordinary ingredients is traffic.

To what purpose would the power to allow importation be given unaccompanied by the power to authorize the sale of the thing imported?

Sale is the object of importation.

It is an essential ingredient of that intercourse of which importation constitutes a part. It is as essential an ingredient, as indispensable as exportation itself. It must be considered as a component part of the power to regulate commerce.

Congress had the power not only to authorize importation but to allow the importer to sell.

The right to bring an article into a State carries with it the right to sell it. (*Spellman* v. *New Orleans*, 45 Federal Reporter, 3.)

An ordinance prohibiting a railroad company from allowing the sale of fruit, vegetables, or perishable fruit

is unconstitutional and void, where the merchandise affected comes from other States. *Spellman* v. *New Orleans*, 45 Federal Reporter, 3.)

The right to transport an article of commerce from one State to another includes the right to sell in original form or packages at the place where the transit terminates.

The right to introduce an article from one State into another carries with it the right to sell the article. (*In re Harmon*, 43 Federal Reporter, 372.)

Transportation of commodities among the several States, or with foreign nations, falls within the description of the words of the statute with regard to interstate commerce, and there is also included in that language that kind of trade in commodities among the States, or with foreign nations, which is not confined to their mere transportation. It includes their purchase and sale. (*United States* v. *The Trans-Missouri Freight Association*, 166, 290.)

Where a State recognizes the manufacture, sale, and use of intoxicating liquors as lawful, it can not discriminate against bringing such articles in and importing them from other States for the purpose of sale. (*Scott* v. *Donald*, 165 U. S., 58.)

Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities and articles bought, sold, or exchanged for the purpose of such transit among the States, or put in the way of transit, may be regulated by Congress, because they form part of interstate trade or commerce.

The buying, selling, and transportation incident thereto, constitute commerce. (*United States* v. *E. C. Knight Co.*, 156 U. S., 1.)

Commerce undoubtedly is traffic, but it is something more; it is intercourse. It includes an exchange of goods—the bringing of them from the seller to the buyer.

Lehigh Valley Railroad Co. v. *Pennsylvania*, 145 U. S., 192.
Wilkerson v. *Rahrer*, 140 U. S., 545.

The power to regulate interstate commerce is solely in the General Government, and it is an essential part of that regulation to prescribe the regular means for accomplishing the introduction and incorporation of articles in and with the mass of property in a country or State. (*Wilkerson* v. *Rahrer*, 140 U. S., 545.)

Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and transportation, and transit of persons and property, as well as the purchase, sale, and exchange of commodities.

McCall v. *California*, 136 U. S., 104.
Bowman v. *C. & N. R. R. Co.*, 125 U. S., 465.

Interstate commerce includes all that portion of commerce with foreign countries, or between the States, which consists in the transportation, purchase, sale, and exchange of commodities.

Interstate commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, pur-

chase, sale, and exchange of commodities between citizens of the different States. (*Welton* v. *Missouri*, 91 U. S., 275.)

Commerce consists in selling the superfluity, in purchasing articles of necessity, as well productions as manufactures; in buying from one nation and selling to another, or in transporting the merchandise from the seller to the buyer to gain freight.

Passenger Cases, 7th Howard, 416.
The P. & R. R. Co. v. *Pennsylvania*, 15 Wallace, 232.

Interstate commerce consists in the transportation, purchase, sale, and exchange of commodities between the States. (*Vandercook* v. *Vance*, 80 Federal Reporter, 786.)

The word "commerce," as used in the act of July 2, 1890, has a broader meaning than the word "trade."

Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, as well as the purchase, sale, and exchange of commodities. (*United States* v. *Cassidy*, 67 Federal Reporter, 698.)

The statute of the State of Virginia prohibiting the sale in the State of meat from the carcase of an animal slaughtered in another State and then shipped into Virginia is unconstitutional and void. The right to import carries with it the right to sell, and the exclusive jurisdiction of Congress does not cease until after sale. (*N. and W. R. R. Co.* v. *Pennsylvania*, 136 U. S., 114.)

Brimmer v. Rebman, 138 U.S. 78.

The statute of Minnesota prohibiting the introduction into that State of the meat of an animal not inspected

twenty-four hours before slaughter is unconstitutional and void, as being an unwarranted interference with interstate commerce. The people of Minnesota have the right to bring into that State for the purpose of sale meat taken from animals slaughtered in other States without being so inspected. And having the right to introduce into the State they have also the right of sale. (*Minnesota* v. *Barber*, 136 U. S., 313.)

A State can not levy a tax or impose any other restrictions upon the citizens or inhabitants of other States for selling, or seeking to sell, their goods in such State. (*Robbins* v. *Shelby County*, 120 U. S., 489.)

The statute of the State intended to regulate or tax, or to impose any other restrictions upon the transmission of persons or property, or telegraphic messages from one State to another, are void.

St. L. & P. R. R. Co. v. *Illinois*, 118 U. S., 557.
Pickard v. *Pullman Southern Car Co.*, 117 U. S., 34.

No State can impose a tax on persons engaged in the sale of goods in such State, which are introduced into the State from other States.

Walling v. *The State of Michigan*, 116 U. S., 446.
Cook v. *Pennsylvania*, 97 U. S., 566.
Hall v. *DeCuir*, 95 U. S., 485.
The H. & St. J. R. R. Co. v. *Husen*, 95 U. S., 465.
Welton v. *Missouri*, 91 U. S., 275.
Ward v. *Merrill*, 12 Wallace, 418.
In re Rebolt, 77 Federal Reporter, 587.

The statute of Iowa prohibiting the manufacture or sale of cigarettes within that State is void as an unwarrantable interference with interstate commerce, in so far

as it applies to the sale of cigarettes imported into the State and sold in original packages. (*Iowa* v. *McGregor*, 76 Federal Reporter, 956.)

The statute of South Carolina, in so far as it prohibits the introduction into that State and the sale in original packages of liquors from other States, is an interference with interstate commerce and void. (*Donald* v *Scott*, 74 Federal Reporter, 859.)

No State can, under any pretext whatever, interfere with the right of any person who engages in interstate commerce, whether in the sale of goods introduced into the State from other States, or in soliciting orders for goods to be so introduced.

Ex parte Loeb, 72 Federal Reporter, 657.
Southern Railway Co. v. *Asheville*, 69 Federal Reporter, 359.
Ex parte Hough, 69 Federal Reporter, 330.
In re Minor, 69 Federal Reporter, 233.
Altman, Miller & Co. v. *Holder*, 68 Federal Reporter, 467.
Ex parte Scott, 66 Federal Reporter. 45.
In re Schechter, 63 Federal Reporter, 695.
In re Mitchell, 62 Federal Reporter, 576.
In re Worthen, 58 Federal Reporter, 467.
In re Rozelle, 57 Federal Reporter, 155.
In re Ware, 53 Federal Reporter, 783.
In re Sanders, 52 Federal Reporter, 802.
In re McAlister, 51 Federal Reporter, 282.
In re Nichols, 48 Federal Reporter, 164.
In re Tyerman, 48 Federal Reporter, 167.
In re Houston, 47 Federal Reporter, 539.
In re Kimmel, 41 Federal Reporter, 775.
Adams Express Company v. *Ohio State Auditor*, 165 U. S., 194.

Osborne v. *Florida*, 164 U. S., 650.
Brennan v. *City of Titusville*, 153 U. S., 289.
Harmon v. *Chicago*, 147 U. S., 396.
Crutcher v. *Kentucky*, 141 U. S., 47.
Pullman Palace Car Company v. *Pennsylvania*, 141 U. S., 18.
McCall v. *California*, 136 U. S., 104.
Asher v. *Texas*, 128 U. S., 129.
Philadelphia and Southern S. S. Co. v. *Pennsylvania*, 122 U. S., 326.
Corson v. *Maryland*, 120 U. S., 502.
Robbins v. *Shelby County*, 120 U. S., 489.
Moran v. *New Orleans*, 112 U. S., 69.
Lelout v. *Mobile*, 127 U. S., 640.
Daniel Ball v. *United States*, 10 Wallace, 557.
Sinnot v. *Davenport*, 22 Howard, 227.
Smith v. *Turner*, 7 Howard, 283.
Webster v. *Bell*, 68 Federal Reporter, 183.

The traffic in these cattle located in the various pens, and where they are delivered from pens situate in Kansas to purchasers across the line in Missouri, and where they are sold from pens in Missouri and delivered to purchasers across the line in Kansas, is interstate traffic.

The mere fact that these cattle cross an imaginary line from Kansas into Missouri, and from Missouri into Kansas, is immaterial. The traffic in them is interstate, regardless of the distance they travel.

The Covington and Cincinnati Bridge was built across the Ohio River, connecting the States of Kentucky and Ohio.

Interstate commerce means commerce between the States, and applies to all commerce which crosses the State line, regardless of the distance from which it comes,

or to which it is bound before or after crossing such State line, and the daily passing of people across this Covington and Cincinnati bridge was as truly interstate commerce as if they were shipping cargoes of merchandise from New York to Liverpool.

Gibbons v. *Ogden*, 9 Wheaton, 1.
Covington and Cincinnati Bridge Company v. *Kentucky*, 154 U. S., 204.

It matters not that the transportation is made in ferryboats which pass between the States. The means of transportation of persons and freight between the States does not change the character of the business as one of commerce, nor does the time within which the distance between the States may be traversed.

Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities. (*Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S., 196.)

All those cattle arriving at the Kansas City stock yards which are shipped to said yards on through bills of lading, with privilege of sale at Kansas City, and in event they are not sold to be reshipped, while at the Kansas City stock yards do not lose their quality of interstate commerce. (*United States* v. *Hopkins*, 82 Federal Reporter, 529.)

Goods in course of transportation through a State, although detained for a time within the State by low water or other causes of delay, are in course of commercial transportation. (*Coe* v. *Errol*, 116 U. S., 517.)

III.

The conduct and method of doing business by the members of this Traders' Live Stock Exchange is an interference with interstate commerce, and the association is illegal.

The right to follow any of the common occupations of life is an inalienable right. (*Allgeyer* v. *Louisiana*, 156 U. S., 578.)

Competition, free and unrestricted, is the general rule which governs all the ordinary pursuits and transactions of life. (*United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290.)

If there be any competition, the extent of the charge for the service will be seriously affected by that fact. Competition will itself bring charges down to what may be reasonable, while in the case of an agreement competition is allowed no play. (*United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290.)

All authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly. It is sufficient if it really tends to that end, and to deprive the public of the advantages which flow from free competition. (*United States* v. *E. C. Knight Co.*, 156 U. S., 1.)

To carry on interstate commerce is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States. (*Crutcher* v. *Kentucky*, 141 U. S., 47.)

While the Constitution does not provide that interstate commerce shall be free, yet, by the grant of this

exclusive power to regulate it, it was left free except as Congress might impose restraint, and it has been determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restriction or imposition. (*Wilkerson* v. *Rohrer*, 140 U. S., 545.)

All contracts and agreements in restraint of trade are void as against public policy: First, because of the injury to the public by being deprived of the restricted party's industry. The other is the injury to the party himself by being prescribed from pursuing his occupation, and thus being prevented from supporting himself and family. (*Gibbs* v. *Gas Company*, 130 U. S., 396.)

The failure of Congress to make regulation in reference to subjects of interstate commerce indicates its will that the subject shall be left free and untrammeled.

Robbins v. *Shelby County*, 120 U. S., 489.
Welton v. *Missouri*, 91 U. S., 275.

The primary object of the act of Congress of July 2, 1890, is to prevent the destruction of legitimate and healthy competition in interstate commerce by the engrossing and monopolizing of the commerce for commodities. (*United States* v. *Cassidy*, 62 Federal Reporter, 698.)

In business or trading combinations they may even temporarily, or perhaps permanently, reduce the price of the article traded in by reducing the expense inseparable from the running of many different companies for the same purpose. Trade or commerce, under those circumstances, may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent

therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class and the absorption of control over one commodity by an all-powerful combination; and the result, in any event, is unfortunate for the country, by depriving it of the services of a large number of small but independent dealers, who were familiar with the business and who had spent their lives in it, and who supported themselves and their families therefrom. It is antagonistic to the substantial interests of the country that any one commodity should be within the sole power and subject to the sole will of one powerful combination. (*United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290.)

The term "contract in restraint of trade" in the act of July 2, 1890, includes all contracts of that nature, whether valid or otherwise, and not alone that kind which was invalid and unenforcible as being in unreasonable restraint of trade. (*United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290.)

In various cases in which there have been proceedings to restrain strikes, it has been held that a combination between laborers joining in labor union to prevent the employment of persons not members of said unions was an interference with interstate commerce. (*United States* v. *Workingmen's Amalgamated Council of New Orleans*, 54 Federal Reporter, 994.)

It has been decided in cases above referred to, and numerous others, that the States could not exact a license fee from one engaged in interstate commerce, and yet

this unincorporated association demands a fee of $500 before one can become a trader or speculator on these yards in the cattle received thereat. This association exacts that which the Commonwealth has no authority to demand. The charges in the bill, abundantly supported by the affidavits, show that this association has absolutely destroyed competition between the traders and speculators in the traffic in these cattle; they have driven from the yards and from the pursuit of their usual business all those traders and speculators who would not become members of their association; they have boycotted commission firms who, in the exercise of an inalienable right, had dared to sell cattle to and to purchase them from any trader or speculator not a member of this association; they have prohibited their own members, as shown by their by-laws, from forming a partnership with any trader or speculator who was not a member of their association; as shown by their by-laws they have prohibited their members from employing any person either to buy or sell cattle for them who was not a member of said association. A more illegal and bolder combination in restraint of trade was never conceived nor carried into execution.

We respectfully submit that upon the record in this case the decree of the circuit court should be affirmed.

JOHN K. RICHARDS,
Solicitor-General.

JOHN R. WALKER,
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No. 379. 181.

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for Appellee

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In the Supreme Court of the United States.

OCTOBER TERM, 1897.

J. C. ANDERSON ET AL.,
v.
THE UNITED STATES. } No. 379.

REPLY ON BEHALF OF UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

J. C. ANDERSON ET AL.
v.
THE UNITED STATES. } No. 479.

BRIEF ON BEHALF OF UNITED STATES IN REPLY.

I.

Counsel for appellants contend in their brief that the right of taxation is the test by which to determine whether or not the property has passed from under the exclusive control of the Federal Government and has become subject to control of the State.

Property transported into a State may become liable to pay taxes, together with all other property in the State, without having lost its character as interstate commerce. In the case of *Brown* v. *Houston* (114 U. S., 622), relied upon by counsel for appellants, this distinction is clearly pointed out. In that case the coal had reached

its destination at New Orleans, and was there offered for sale. It was the end of its transportation, and, as said by this court, might remain there for a year or more. The supreme court of Louisiana, in its opinion, which was affirmed in this case, held distinctly that the clause in the Federal Constitution granting to Congress power to regulate commerce with foreign countries and among States had no immediate relation to or necessary connection with the taxing power of the State. That every tax upon property, it is true, might affect more or less the operations of commerce by diminishing the profits to be derived from the objects of commerce, but it does not for that reason amount to a regulation of commerce within the meaning of the Federal Constitution. If this tax had been levied by the State of Louisiana upon the coal because of and by reason of its having been brought from another State, it would clearly have been a discrimination, and have amounted to a regulation of interstate commerce.

This very point was decided in *Brown* v. *Maryland* (12 Wheat., 419), the opinion having been written by Chief Justice Marshall. The case involved the constitutionality of the act of Maryland requiring a license to be taken out by all importers of foreign articles, commodities, etc., and the Chief Justice very clearly points out that the jurisdiction of the National Government continues over articles introduced into a State even of their final destination until after a sale. He says:

> To what purpose should the power to allow importation be given unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation, and is an essential ingredient

> of that intercourse of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce.

Congress has a right not only to authorize importation, but to authorize the importer to sell. On this point Chief Justice Marshall, in the case above referred to, says:

> We think, then, that if the power to authorize a sale exists in Congress, the conclusion that the right to sell is connected with the law permitting importation, as an inseparable incident, is inevitable.

And he adds further:

> It may be proper to add that we suppose the principles laid down in this case, to apply equally to importations from a sister State.

In the case of *Welton* v. *Missouri* (1 Otto, 275) this case involved the validity of an act of the legislature of Missouri requiring a license tax for peddlers. The statute defined a peddler to be, "whoever deals in the sale of goods, wares, or merchandise, * * * which are not the growth, produce, or manufacture of the State, by going from place to place to sell the same." This act was held to be unconstitutional, because it was an interference with interstate commerce, and the court says:

> Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of our country and the citizens or subjects of other countries, and between the citizens of different States. * * *

> It will not be denied that that proportion of commerce with foreign countries and between the States which consists in the transportation and exchange of commodities is of national importance, and admits and requires uniformity of regulation.
>
> The power which insures uniformity of commercial regulation must cover the property which is transported as an article of commerce from hostile or interfering legislation, until it has mingled with and become a part of the general property of the country, and subjected, like it, to similar protection, and to no greater burdens. * * * It is sufficient to hold now that the commercial power continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character. That power protects it, even after it has entered the State, from any burdens imposed by reason of its foreign origin.

In *Guy* v. *Baltimore* (100 U. S., 434) an ordinance of the city of Baltimore required vessels ladened with products of other States to pay for the use of wharves fees not exacted of home vessels. This ordinance was held to be an interference with interstate commerce, and the opinion draws the distinction between the right of taxation and the right of the State or city to regulate or interfere with commerce. In this case, as in the case of *Welton* v. *Missouri*, and *Brown* v. *Maryland*, above, the property had reached the State into which it was introduced, and, if the contention of counsel for appellants is true, the property in each instance would have been under the sole control of the States into which introduced. In the case of *Brown* v. *Houston*, above referred to, the court very clearly recognized the continuing

national power over the subject of commerce introduced into a State, even after it has reached its destination, and recognized that Congress had the power to relieve such property from taxation after reaching its destination. In the opinion the court says:

> When Congress shall see fit to make a regulation on the subject of property transported from one State to another, which may have the effect to give it a temporary exemption from taxation in the State to which it is transported, it will be time enough to consider any conflict that may arise between such regulation and the general taxing laws of the State.

Surely Congress could make no regulation exempting such property from taxation upon any other constitutional ground than that it remained interstate commerce even after entering the State of its destination.

In the case of the *Pittsburgh and Southern Coal Company* v. *Bates* (156 U. S., 577), it was held that coal was subject to taxation in the State of Louisiana. This coal was still in the course of transportation. It had not yet reached its destination, to wit, the city of New Orleans. The vessels loaded with coal and in transit to New Orleans were stopped and moored in the Mississippi at Baton Rouge, so that the distinction between the right of a State to tax and the power to regulate interstate commerce is most clearly apparent, because this coal was still in transit, had not reached its destination, was temporarily stopped at Baton Rouge, and under the decision of this court in the case of *Cole* v. *Errol* (116 U. S., 517), was still clothed with the quality of interstate commerce and immunity from State regulations.

It therefore clearly appears that the right of taxation is not the test by which to determine whether or not the property has lost the character of interstate commerce. In truth, the attorney-general of Louisiana in the argument in this case contended that the taxation in question did not in any way infringe upon the constitutional provision relating to the regulation of commerce. His contention was that a tax on property that might be the subject of Congressional legislation is not a tax on commerce, and neither was the tax on property which has been the subject of such commerce, where it was taxed only as property and in common with all other property within the State. In its opinion in this last case, this court refers to the decision in the case of *Brown* v. *Houston* (114 U. S., 622) and states that the question was,

> whether the assessment of the tax upon the coal in question in the barges afloat amounted to any interference with or restriction upon the free introduction of the plaintiff's coal from the State of Pennsylvania to the State of Louisiana. In other words, whether the tax amounted to a regulation or restriction upon commerce of the States, or only to the exercise of local administration under the general taxing power, which, though it may incidentally affect the subjects of commerce, is entirely within the power of the State until Congress shall see fit to interfere and make express regulations on the subject.

And the court further adds, referring to the case of *Brown* v. *Houston:*

> And the court further observed that it saw no conflict in that case * * * with the established

rule that a State can not pass a law which shall interfere with the unrestricted freedom of commerce between the States.

Until Congress shall have acted, the States may continue to regulate matters of local interest only, incidentally affecting foreign and interstate commerce, such as pilots, wharves, harbors, roads, bridges, freights, tolls, etc.

This distinction is apparent in the decision of this court in the case of *Pittsburgh and Southern Coal Company* v. *State of Louisiana* (156 U. S., 590). In this case was involved the constitutionality of the statute of Louisiana providing for the appointment of two coal and coke boat gaugers, and to fix their compensation to be paid by the owner.

In this case, as in the former, the coal was still on boats and barges on the Mississippi River, having been introduced from the State of Pennsylvania, and was still the subject of interstate commerce; but this court held that there was nothing in the provisions of the act of Louisiana which could properly be considered as a regulation of commerce in conflict with the power vested in Congress over the subject. It was recognized that the act might in a slight degree affect commerce, but not in such an extent or sense as to be properly designated as a regulation of commerce.

A distinction should be further drawn between property like this coal, which is shipped to a final destination as New Orleans and there is to be offered for sale, and the cattle is the case at bar, which are to remain only temporarily at the city of Kansas City. They are intended for immediate sale, and either immediate slaughter or

immediate transportation to the other markets. Delay of from one to two days would cause not only a loss in weights, but such a loss in grade and quality as render them unfit for the purposes for which the original shippers intended them. In the light of the foregoing opinions, would anyone contend that if the legislature of Missouri had passed an act requiring a license fee of $500 before anyone should be authorized to trade in cattle brought from other States and Territories, it would not be an attempted regulation of commerce, and therefore void; and surely what the State could not do in its sovereign capacity could not be legally done by this unincorporated association of traders.

In the case of *Scott* v. *Donald* (165 U. S., 58), it was held that the dispensary law of the State of South Carolina was a discrimination against goods brought into the State from other States. The statute of South Carolina did not purport to prohibit either the importation, manufacture, sale, or use of intoxicating liquors. On the contrary, liquors and wines are recognized as commodities which might be lawfully made, bought, and sold. Such liquors must, therefore, be deemed to be the subject of interstate commerce. Under the contention of appellants' counsel, the jurisdiction of the Federal Government over these liquors had ceased, because the liquors had reached their destination; but this court thought otherwise, and declared the law to be void in so far as it applied to liquors introduced from other States.

In the case of *Welton* v. *Missouri* (1 Otto, 275), above referred to, the statute of Missouri requiring a license tax

from a pedler was held to be void as an attempted regulation of interstate commerce, in view of the fact that a pedler was defined to be one dealing in the sale of goods not the growth, product, or manufacture of that State; yet in the case of *Ficklen* v. *Shelby County* (145 U. S., 1), this court held that the fee or license tax imposed by the statute of Tennessee upon Ficklen, who was a commercial agent or a merchandise broker having an office in the district, and whose business was to negotiate the sale of goods for nonresident merchants, was within the power of the State, and it was held that the legislature had the right to tax such dealers, professions, and occupations, and that such a tax was not a regulation of nor tax of interstate commerce when the party was engaged in selling goods located in other States. These two decisions of this court clearly recognize the distinction for which we contend.

In *Walling* v. *Michigan* (116 U. S., 446) the statute of Michigan imposed a tax upon persons who, not residing or having their principal place of business within the State, should engage there in the business of selling or soliciting the sale of liquors, but did not impose a similar tax upon persons selling or soliciting the sale of liquors manufactured within the State. This court held that this act was a regulation in restraint of commerce, and was void. The court says:

> A discriminating tax imposed by a State, operating to the disadvantage of the products of other States when introduced into the first-mentioned State, is in effect a regulation in restraint of commerce among States, and as such is a usurpation of the power conferred by the Constitution upon the Congress of the United States.

In the case of *Brimmer* v. *Rebman* (138 U. S., 78) was considered a statute of Virginia which declared it to be unlawful to offer for sale within the limits of that State any meat from animals slaughtered 100 miles or more from the place at which it was offered for sale, unless it had been previously inspected and approved by local inspectors. Now, in this case the law did not require the inspection of fresh meats from animals slaughtered within 100 miles from the place in Virginia at which such meats were offered. If it had been a law requiring all meats to be inspected, then, under the decision of this court in the case of *Pittsburgh and Southern Coal Company* v. *Louisiana* (156 U. S., 590), it would have been a valid exercise of the police powers of the State. But in this case the act was held void as being in restraint of commerce, by virtue of its imposing a discriminating tax upon the products and industries of other States. Before the law could operate upon the meats affected they must have reached their destination, so that we see again that the right of taxation is not the test whether or not the property is interstate commerce.

In the case of *Bowman* v. *Railroad Company* (125 U. S., 465), the court held invalid a statute forbidding the importation of liquors. In this case the situs of the property was the State attempting to control it, but the court in its opinion necessarily held it to be still under the jurisdiction of the National Government. In the opinion in this case it is said:

> The very purpose and motive of that branch of commerce which consists in transportation is that other and consequent act of commerce which con-

sists in the sale and exchange of the commodities transported. Such, indeed, was the point decided in the case of *Brown* v. *Maryland* (12 Wheat., 419), as to foreign commerce, with the express statement, in the opinion of Chief Justice Marshall, that the conclusion would be the same in a case of commerce among the States.

In the case of *Henderson Bridge Company* v. *The City of Henderson* (141 U. S., 679) it was held that the taxation of a bridge was not a regulation of commerce among the States, or the taxation of any agency of the Federal Government. The State was permitted to tax the bridge in order that property within its jurisdictional limits might pay its just proportion of the public revenues. By comparing the decision of this court in this case with its decision in the case of the *Covington Bridge Company* v. *Kentucky* (154 U. S., 204) we see the distinction clearly pointed out between the taxation of property and the regulation of interstate commerce.

In the case of *United States* v. *Jellico Mountain Coal and Coke Company* (46 Fed. Rep., 432) was involved the agreement entered into by the members of the Nashville Coal Exchange. In this case, the coal had reached its destination, and was there offered for sale. The members of this Nashville Coal Exchange adopted certain rules, and provided certain penalties to be inflicted upon those who should violate any of the rules. The court held that the agreement was in restraint of trade and commerce, and that the organization and the operation thereof under the rules was an agreement in restraint of trade and commerce, within the meaning of the anti-trust act of July 2, 1890.

So in the recent case of *United States* v. *Coal Dealers' Association of California*, in the circuit court of the United States for the ninth circuit in the northern district of California, in an opinion by Judge Morrow, which has not yet been printed, it is held that an association of dealers in coal in San Francisco was an unlawful combination and in restraint of trade, and said association was enjoined under the provisions of the act of July 2, 1890. In this case the coal was brought from British Columbia and the States of Oregon and Washington. The members of the association adopted certain rules and regulations fixing certain charges for the handling of the coal, certain weights, and regulating the trade therein, and establishing arbitrary rates for the coal. In that case the coal had reached San Francisco, its destination, and there was held by the members of the association for sale to the trade. It would be liable to taxation, as was held in the case of *Brown* v. *Houston*, and in the case of the *Pittsburg and Southern Coal Company* v. *Bates* (156 U. S., 577). Nevertheless, in this case it was held to still be interstate commerce and the association had unlawfully combined in restraint of trade, within the purview of the statute of July 2, 1890. It was contended very earnestly in that case, as in this, that the case presented by the bill was not within the law, and that the line dividing local from Federal authority excluded it from the jurisdiction of the Federal court.

Upon the power and right of the State to tax, this court, in the case of *Sherlock* v. *Alling* (93 U. S., 99), says:

> But upon an examination of the cases it will be found that the legislation adjudged invalid imposed

> a tax upon some instrument or subject of commerce, or exacted a license from parties engaged in commercial pursuits, * * * or prescribed conditions in accordance with which commerce in particular articles or between particular places was required to be conducted. In all the cases the legislation condemned operated directly upon commerce, either by way of taxation upon its business, license upon its pursuit in particular channels, or conditions for carrying it on. * * * General legislation of this kind, prescribing the liabilities or duties of citizens of a State, without distinction as to pursuit or calling, is not open to any valid objection because it may affect persons engaged in foreign or interstate commerce.

And it may be said generally that legislation of a State not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of the citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon its citizens and property within its territory.

In *Lyng* v. *Michigan* (135 U. S., 161) it is said:

> We have repeatedly held that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that such taxation is a burden on that commerce, and amounts to a regulation of it.

In *McCall* v. *California* (136 U. S., 104) the statute of California was held to be an attempted regulation of interstate commerce, and invalid, which required a license tax to be levied upon an agent of the railroad company,

having its principal place of business in Chicago, who was in the State of California soliciting passengers for his road. In its opinion this court quoted from the opinion in *Mobile* v. *Kimball* (102 U. S., 691), and says:

> Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.

And the court then quotes, with approval, section 378 from Pomeroy and his work on Constitutional Law, as follows, wherein he refers to the signification of the word "commerce:"

> It includes the fact of intercourse and of traffic. The fact of intercourse and traffic, again, embraces all the means, instruments, and places by and in which intercourse and traffic are carried on, and, further still, comprehends the act of carrying them on at these places and by and with these means. The subject-matter of intercourse or traffic may be either things, goods, chattels, merchandise, or persons. All these may, therefore, be regulated.

In the case of *Howe Machine Company* v. *Gage* (100 U. S., 676), there is involved the construction of the statute of Tennessee which required that a license fee or tax should be paid by all peddlers of sewing machines, without regard to the place of growth or produce of material, or manufacture. The plaintiff company was a corporation of the State of Connecticut, with an agent at Nashville, in the State of Tennessee, from which place he went into the various districts of the State to sell his machines. It was held that the fee could be properly demanded, and

the act was not in conflict with the Constitution of the United States as a regulation of commerce, as the fee or license tax was levied alike upon all parties within the State.

So, also, in the case of *Hinson* v. *Lott* (8 Wall., 148). Hinson was a merchant of Mobile, Ala. He had on hand liquors, some of which had been consigned to him by a resident of Ohio. Other liquors he had himself purchased in the State of Louisiana, and some he had imported. Under the laws of Alabama a tax of 50 cents per gallon was levied upon all liquors purchased by him, and also in reference to the liquors consigned to him by a citizen of Ohio, and this decision, when compared with the decisions in *Leisy* v. *Hardin*, *Bowman* v. *Railroad*, and *Scott* v. *Donald*, clearly points out the distinction between the right of a State to tax and the right of a State to regulate interstate commerce. The State, in its sovereign capacity, has the right to tax property situated in such State and under the protection of its laws.

II.

Counsel for appellants insist in their brief that appellants in their method of dealing with each other, under the rules of the association and yielding obedience thereto, are not interfering with interstate commerce, and have not formed an illegal association or combination, and refer, with great confidence, to the case of *Mogul Steamship Company* v. *McGregor* (23 Q. B. D., 544). This case of the *Mogul Steamship Company* v. *McGregor* was cited in argument in the Trans-Missouri

Freight Case, and the doctrine announced therein was repudiated by this court.

Upon an examination of all the authorities referred to by counsel for appellants in urging that this association is not an unlawful one, it will be found that the measure of the legality of the various agreements, combinations, and associations was one of reasonableness, and it was held that they were not unlawful if they were not unreasonable; but this distinction has been finally extinguished and destroyed by this court in its recent decision in the case of the Trans-Missouri Freight Association.

Counsel insist that the method of doing business by this association does not destroy competition. The fact, however, remains, as is abundantly shown by the record in this case, that before this organization was entered into there were more than 200 dealers in these cattle at the Kansas City stock yards, but since its organization there are 143 engaged in this trade, all of whom are members of this association. The remainder have been driven from the yards and forced out of this traffic. It has not destroyed competition between the members of the association, but it has absolutely prohibited any competition from any other source.

We respectfully submit that the decree in this case should be affirmed.

JOHN K. RICHARDS,
Solicitor-General.

JOHN R. WALKER,
United States Attorney.

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ANDERSON *v.* UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 181. Argued February 25, 28, 1898. — Decided October 24, 1898.

The Traders' Live Stock Exchange was an unincorporated association in Kansas City, whose members bore much the same relation to it, and through it carried on much the same business as that carried on by the members of the Kansas City Live Stock Exchange, considered and passed upon in *Hopkins* v. *United States*, just decided. The main difference was, that the members of the Traders' Exchange, defendants in the present proceedings, were themselves purchasers of cattle on the market, while the defendants in the former case were commission merchants who sold cattle upon commission as a compensation for their service. The articles of association of the Traders' Exchange contained the following preamble: "We, the undersigned, for the purpose of organizing and maintaining a business exchange, not for pecuniary profit or gain, but to promote and protect all interests connected with the buying and selling of live stock at the Kansas City Stock Yards, and to cultivate courteous and manly conduct towards each other, and give dignity and responsibility to yard traders, have associated ourselves together under the name of Traders' Live Stock Exchange, and hereby agree, each with the other, that we will faithfully observe and be bound by the following rules and by-laws and such new rules, additions or amendments as may from time to time be adopted in conformity with the provisions thereof from the date of organization." The rules objected to in the bill in this case were the following: "Rule 10. This exchange will not recognize any yard trader unless he is a member of the Traders' Live Stock Exchange. Rule 11.

Statement of the Case.

When there are two or more parties trading together as partners, they shall each and all of them be members of this exchange. Rule 12. No member of this exchange shall employ any person to buy or sell cattle unless such person hold a certificate of membership in this exchange. Rule 13. No member of this exchange shall be allowed to pay any order buyer or salesman any sum of money as a fee for buying cattle from or selling cattle to such party." *Held:*

(1) That this court is not called upon to decide whether the defendants are or are not engaged in interstate commerce, because if it be conceded they are so engaged, the agreement as evidenced by the by-laws is not one in restraint of that trade, nor is there any combination to monopolize or attempt to monopolize such trade within the meaning of the act;

(2) That, following the preceding case, in order to come within the provisions of the statute the direct effect of an agreement or combination must be in restraint of that trade or commerce which is among the several States, or with foreign nations;

(3) That where the subject-matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct or restrain that commerce, but that it was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object;

(4) That the rules are evidently of a character to enforce the purpose and object of the exchange as set forth in the preamble, and that for such purpose they are reasonable and fair, and that they can possibly affect interstate trade or commerce in but a remote way, and are not void as violations of the act of Congress.

THIS suit is somewhat similar to the *Hopkins suit*, just decided, and was brought by the United States against the defendants named, who were citizens and residents of the Western Division of the Western District of Missouri and members of a voluntary unincorporated association known and designated as the Traders' Live Stock Exchange, the suit being brought for the purpose of obtaining a decree dissolving the exchange and enjoining the members thereof from entering into or continuing any sort of combination to deprive any people engaged in shipping, selling, buying and handling

live stock (received from other States and from the Territories, intended to be sold at the Kansas City market), of free access to the markets at Kansas City, and to the same facilities afforded by the Kansas City stock yards, to defendants and their associate members of the Traders' Live Stock Exchange.

The bill was filed under the direction of the Attorney General of the United States by the United States District Attorney for the Western District of Missouri. It alleged in substance that the exchange was governed by a board of eight directors, who carried on the business thereof with the consent and approbation of the defendants, they personally being members of the exchange. It then made the same allegations in relation to the stock yards being partly in Kansas City, Kansas, and partly in Kansas City, Missouri, that are contained in the bill in the *Hopkins case*, just decided, and also as to the sales of herds or droves of cattle which were at the time of the sale partly in one State and partly in another. It is further alleged that the Kansas City stock yards are a public market, and, next to the market at Chicago in the State of Illinois, the largest live stock market in the world, and vast numbers of cattle, hogs and other live stock are received annually at the market, shipped from various States and from the Territories, and are sold at the market to buyers who reside in other States and Territories, and who reship the stock; that the stock is shipped to the market under contracts by which the shipper is permitted to unload the stock at the Kansas City stock yards, rest, water and feed the same, and is accorded the privilege of selling the stock on the Kansas City market if the prices prevailing at the time justify the sale, and many head of such stock are so sold; that prior to the month of March, 1897, as alleged, the defendants herein were engaged as speculators at the Kansas City stock yards, and were buying upon the market and reselling upon the same market and reshipping to other markets in other States the cattle so received at the Kansas City stock yards; that all the live stock shipped to and received at these stock yards is consigned to commission merchants, who take charge of the stock when it is received, and who sell the same

to packing houses located at Kansas City, Missouri, and Kansas City in the State of Kansas, and they sell large numbers of cattle to the defendants herein.

The bill then alleges that the defendants "have unlawfully entered into a contract, combination and conspiracy in restraint of trade and commerce among the several States and with foreign nations, in this, to wit, that they have unlawfully agreed, contracted, combined and conspired to prevent all other persons than members of the Traders' Live Stock Exchange, as aforesaid, from buying and selling cattle upon the Kansas City market at the Kansas City stock yards as aforesaid; that the commission, firm, person, partnership or corporation to whom said cattle are consigned at Kansas City, as aforesaid, is not permitted to and cannot sell or dispose of said cattle at the Kansas City market as aforesaid to any buyer or speculator at the Kansas City stock yards unless said buyer or speculator is a member of the Traders' Live Stock Exchange, and these defendants (and each of them), unlawfully and oppressively refuse to purchase cattle, or in any manner negotiate or deal with or buy from any commission merchant who shall sell or purchase cattle from any speculator at the said Kansas City stock yards who is not a member of the said Traders' Live Stock Exchange; that by and through the unlawful agreement, combination and conspiracy of these defendants the business and traffic in cattle at the said Kansas City stock yards is interfered with, hindered and restrained, thus entailing extra expense and loss to the owner, and placing an obstruction and embargo on the marketing of cattle shipped from the States and Territories aforesaid to the Kansas City stock yards."

It is further alleged that, acting in pursuance of the unlawful combination above described, the board of directors of the exchange have imposed fines upon certain members of the exchange "who had traded with persons, speculators upon the markets, who were not members of the said live stock exchange, and within three months last past have imposed fines upon members of said live stock exchange who have traded with commission firms at said Kansas City stock yards

which said commission firms had bought from, and sold cattle to speculators upon said market who were not members of the said live stock exchange."

It was further stated in the bill that in carrying out the purposes and aims of this exchange and by the conduct of its members engaged in this alleged combination, conspiracy and confederation, they were acting in violation of the laws of the United States, and particularly in violation of section 1 of the act of Congress, approved July 2, 1890, c. 647, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," 26 Stat. 209, and in the prosecution of this unlawful combination they had agreed to hinder and delay the business of buying and selling cattle at the market named and had confederated together in restraint of trade and commerce between the States, and that the object of the defendants in organizing the exchange was to prevent the sale by any commission merchant at the Kansas City stock yards of any cattle to any person who might be a buyer and speculator upon the market who is not a member of the exchange.

Accompanying this bill were several affidavits of individuals not members of the exchange, but who were traders or speculators at the stock yards, and those persons said that they were acquainted with the association in question and with the officers and members, and that they did everything in their power to prevent other persons who were not members from trading at the stock yards, and a number of instances were given in which the affiants who were not members of the exchange were endeavoring to do business with commission merchants and others at the exchange in question, when the affiants were notified that they could not continue in business unless they became members of the association, and where partnerships were engaged in business where one partner was a member of the association, the partner who was a member was notified that he could not continue in the partnership business with the other unless such other also became a member; that they had attempted to buy cattle from a great many commission firms and from their salesmen at these stock yards,

but as soon as they went into the yards where the cattle were that were consigned to commission firms and attempted to purchase them, some of the defendants would appear, call the salesman aside, and, after having a conversation with such salesman, the latter would invariably return to affiant and say that he could not price cattle to the affiant or sell the same to him, as he had been warned by members of the exchange not to do so; that the Traders' Live Stock Exchange would not permit other traders and speculators upon the market, and that the exchange does not permit commission firms at the stock yards to sell cattle consigned to them to any trader or speculator upon the market who is not a member of the exchange, and that commission firms had been notified by the officers of the stock exchange not to sell to speculators on the market who were not members of the Live Stock Exchange, and where commission firms sold cattle to traders and speculators upon the market who were not members of the exchange, the association and members thereof would boycott the commission firm making such sales, and refuse to purchase any cattle from them, and refuse to go into the lots and look at cattle which had been consigned to them.

Upon the bill and affidavits application was made to the Circuit Court for the Western Division of the Western District of Missouri for an injunction as prayed for in the bill, in opposition to which application various affidavits were read on the part of the defendants, and copies of the articles of association and by-laws of the exchange were attached to the affidavit of the president of the exchange and read on the motion.

Among other affidavits was that of the general superintendent of the stock yards company, who said that he had known the organization, the Traders' Live Stock Exchange, since its formation, and that it had been a benefit to the live stock market at Kansas City by furnishing constant buyers for cattle shipped to the market, no matter how large the receipts for any one day or series of days might be, and also by raising the standard of business integrity among its members, because it required every member to comply with his business promises

and verbal agreements; that no embargo was placed upon any one purchasing or desiring to purchase cattle at the yards, but a free and open market was offered to all buyers and sellers; that the members of the organization were engaged in the business of buying and selling cattle on the market, and were competitors among and against each other; that their organization did not restrain or interfere with interstate or local commerce, and the members did not monopolize or attempt to monopolize the business of buying and selling cattle at Kansas City, nor did the organization in any manner tend to limit or decrease the number of cattle marketed at Kansas City, but that it had the contrary effect; that about eighty-five per cent of the total receipts for the years 1895, 1896 and 1897 at the Kansas City market of cattle had been billed to the Kansas City market alone for purposes of sale there.

Other affidavits were presented to the same effect. Also the affidavit of the president of the exchange. The president denied all allegations in relation to conspiracies to prevent other persons than members of the exchange from buying and selling cattle upon the Kansas City market, and on the contrary alleged that in buying cattle the defendants were in competition with each other, with the representative buyers of all the packing houses, with the representatives of the various commission merchants who buy constantly on orders from a distance, and with others who buy on orders on their own account, none of whom are members of the exchange, and that with these various classes of buyers the defendants constantly deal, and that in selling cattle they compete with each other and with shippers and commission merchants offering stock for sale on the market; that the business in which these defendants are engaged is that of buying and selling cattle known as "stockers and feeders;" that the business is purely local to that market; that the defendants do not deal in quarantine cattle subject to government inspection or cattle shipped through to other markets, with or without the privilege of the Kansas City market, nor in fat cattle sold on the local market shipped to other States or to foreign countries; that except in rare instances both purchases and sales made

by the defendants are made from and to persons not members of the exchange, and that in the judgment of the president about ninety-nine per cent of the transactions by the defendants are with persons not members of the exchange.

A copy of the articles of association is annexed to the affidavit, which contains the following preamble:

"We, the undersigned, for the purpose of organizing and maintaining a business exchange, not for pecuniary profit or gain, but to promote and protect all interests connected with the buying and selling of live stock at the Kansas City Stock Yards, and to cultivate courteous and manly conduct towards each other, and give dignity and responsibility to yard traders, have associated ourselves together under the name of Traders' Live Stock Exchange, and hereby agree, each with the other, that we will faithfully observe and be bound by the following rules and by-laws and such new rules, additions or amendments as may from time to time be adopted in conformity with the provisions thereof from the date of organization."

Rules 10, 11, 12 and 13 are as follows:

"Rule 10. This exchange will not recognize any yard trader unless he is a member of the Traders' Live Stock Exchange.

"Rule 11. When there are two or more parties trading together as partners, they shall each and all of them be members of this exchange.

"Rule 12. No member of this exchange shall employ any person to buy or sell cattle unless such person hold a certificate of membership in this exchange.

"Rule 13. No member of this exchange shall be allowed to pay any order buyer or salesman any sum of money as a fee for buying cattle from or selling cattle to such party."

These are the rules which are specially obnoxious to the complainants, and are alleged to be in their effect in violation of the Federal statute above mentioned.

Mr. R. E. Ball for Anderson and others. *Mr. I. P. Ryland* and *Mr. John L. Peak* were on his brief.

Mr. John R. Walker for the United States. *Mr. Solicitor General* was on his brief.

Opinion of the Court.

MR. JUSTICE PECKHAM, after stating the case, delivered the opinion of the court.

There is really no dispute in regard to the facts in the case. Although the bill contains various allegations in regard to conspiracies, agreements and combinations in restraint of trade and in violation of the Federal statute, yet there is no evidence of any act on the part of the defendants preventing access to the yards or preventing purchases and sales of cattle by any one, other than as such sales may be prevented by the mere refusal on the part of the defendants as "yard traders" to do business with those who are also yard traders, but are not members of the exchange, or with commission merchants where such commission merchants themselves do business with yard traders who are not members of the exchange. In other words, there is no evidence and really no charge against the defendants that they have done anything other than to form this exchange and adopt and enforce the rules mentioned above, and the question is whether by their adoption and by peacefully carrying them out without threats and without violence, but by the mere refusal to do business with those who will not respect their rules, there is a violation of the Federal statute.

This case differs from that of *Hopkins* v. *United States*, *supra*, in the fact that these defendants are themselves purchasers of cattle on the market, while the defendants in the *Hopkins case* were only commission merchants who sold the cattle upon commission as a compensation for their services.

Counsel for the Government assert that any agreement or combination among buyers of cattle coming from other States, of the nature of the by-laws in question, is an agreement or combination in restraint of interstate trade or commerce.

The facts first set forth in the complainants' bill upon which to base the claim that the business of defendants is interstate commerce, we have already decided in the *Hopkins case* to be immaterial. The particular situation of the yards, partly in Kansas and partly in Missouri, we there held was a fact without any weight, and one which did not make business inter-

state commerce which otherwise would not partake of that character.

There remain in the bill of the complainants the allegations that the cattle come from various States and are placed on sale at these stock yards which form the only available market for many miles around, and that they are sold by the commission merchants and are bought in large numbers by the defendants who have entered into what the complainants allege to be a contract, combination and conspiracy in restraint of trade and commerce among the several States, which contract, etc., it is alleged is carried out by defendants unlawfully and oppressively refusing to purchase cattle from a commission merchant who sells or purchases cattle from any speculator (yard trader) who is not a member of the exchange; and it is further alleged that by these means the traffic in cattle at the Kansas City stock yards is interfered with, hindered and restrained, and extra expense and loss to the owner incurred, and that thereby the defendants have placed an obstruction and embargo on the marketing of cattle shipped from other States. All these results are alleged to flow from the agreement among the defendants as contained in the by-laws of their association, particularly those numbered ten, eleven, twelve and thirteen, copies of which are set forth in the statement of facts herein.

There is no evidence that these defendants have in any manner other than by the rules above mentioned hindered or impeded others in shipping, trading or selling their stock, or that they have in any way interfered with the freedom of access to the stock yards of any and all other traders and purchasers, or hindered their obtaining the same facilities which were therein afforded by the stock yards company to the defendants as members of the exchange, and we think the evidence does not tend to show that the above results have flowed from the adoption and enforcement of the rules and regulations referred to.

In regard to rule 10, the question is whether, without a violation of the act of Congress, persons who are engaged in the common business as yard traders of buying cattle at the

Kansas City stock yards, which come from different States, may agree among themselves that they will form an association for the better conduct of their business, and that they will not transact business with other yard traders who are not members, nor will they buy cattle from those who also sell to yard traders who are not members of the association.

It will be remembered that the association does no business itself. Those who are members thereof compete among themselves and with others who are not members, for the purchase of the cattle, while the association itself has nothing whatever to do with transportation nor with fixing the prices for which the cattle may be purchased or thereafter sold. Any yard trader can become a member of the association upon complying with its conditions of membership, and may remain such as long as he comports himself in accordance with its laws. A lessening of the amount of the trade is neither the necessary nor direct effect of its formation, and in truth the amount of that trade has greatly increased since the association was formed, and there is not the slightest evidence that the market prices of cattle have been lowered by reason of its existence. There is no feature of monopoly in the whole transaction.

The defendants are engaged in buying what are called "stockers and feeders;" being cattle not intended for any other market, and the demand for which is purely local. They have arrived at their final destination when offered for sale, and there is free and full competition for their purchase between all the members of the exchange, as well as between them and all buyers not members thereof, who are not also yard traders. With the latter the defendants will not compete, nor will they buy of the commission men if the latter continue to sell cattle to such yard traders.

Have the defendants the right to agree to conduct their own private business in this way?

Whether there is any violation of the act of Congress by the adoption and enforcement of the other rules of the association, above referred to, will be considered hereafter.

It is first contended on the part of the appellants that they

are not engaged in interstate commerce or trade, and that therefore their agreement is not a violation of the act. They urge that the cattle, by being taken from the cars in which they were transported and placed in the various pens hired by commission merchants at the cattle yards of Kansas City, and there set up for sale, have thereby been commingled with the general mass of other property in the State, and that their interstate commercial character has ceased within the decisions of this court in *Brown* v. *Houston*, 114 U. S. 622, and *Pittsburg and Southern Coal Co.* v. *Bates*, 156 U. S. 577.

On the other hand, it is answered that the cases cited involved nothing but the general power of the State to tax all property found within its limits, by virtue of general laws providing for such taxation, where no tax is levied upon the article or discrimination made against it by reason of the fact that it has come from another State, and it is maintained that the agreement in question acts directly upon the subject of interstate commerce and adds a restraint to it which is unlawful under the provisions of the statute.

In the view we take of this case we are not called upon to decide whether the defendants are or are not engaged in interstate commerce, because if it be conceded they are so engaged, the agreement as evidenced by the by-laws is not one in restraint of that trade, nor is there any combination to monopolize or attempt to monopolize such trade within the meaning of the act.

It has already been stated in the *Hopkins case*, above mentioned, that in order to come within the provisions of the statute the direct effect of an agreement or combination must be in restraint of that trade or commerce which is among the several States, or with foreign nations. Where the subject-matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct or restrain that commerce, but that it was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as

not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object. As is said in *Smith* v. *Alabama*, 124 U. S. 465, 473: "There are many cases, however, where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations." The same is true as to certain kinds of agreements entered into between persons engaged in the same business for the direct and *bona fide* purpose of properly and reasonably regulating the conduct of their business among themselves and with the public. If an agreement of that nature, while apt and proper for the purpose thus intended, should possibly, though only indirectly and unintentionally, affect interstate trade or commerce, in that event we think the agreement would be good. Otherwise, there is scarcely any agreement among men which has interstate or foreign commerce for its subject that may not remotely be said to, in some obscure way, affect that commerce and to be therefore void. We think, within the plain and obvious construction to be placed upon the act, and following the rules in this regard already laid down in the cases heretofore decided in this court, we must hold the agreement under consideration in this suit to be valid.

From very early times it has been the custom for men engaged in the occupation of buying and selling articles of a similar nature at any particular place to associate themselves together. The object of the association has in many cases been to provide for the ready transaction of the business of the associates by obtaining a general headquarters for its conduct, and thus to ensure a quick and certain market for the sale or purchase of the article dealt in. Another purpose has been to provide a standard of business integrity among the members by adopting rules for just and fair dealing among them and enforcing the same by penalties for their violation. The agreements have been voluntary, and the

penalties have been enforced under the supervision and by members of the association. The preamble adopted by the association in this case shows the ostensible purpose of its formation. It was not formed for pecuniary profits, and a careful perusal of the whole agreement fails, as we think, to show that its purpose was other than as stated in the preamble. In other words, we think that the rules adopted do not contradict the expressed purpose of the preamble, and that the result naturally to be expected from an enforcement of the rules would not directly, if at all, affect interstate trade or commerce. The agreement now under discussion differs radically from those of *United States* v. *Jellico Mountain Coal & Coke Co.*, 46 Fed. Rep. 432; *United States* v. *Coal Dealers Association of California*, 85 Fed. Rep. 252, and *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. Rep. 271. The agreement in all of these cases provided for fixing the prices of the articles dealt in by the different companies, being in one case iron pipe for gas, water, sewer and other purposes, and coal in the other two cases. If it were conceded that these cases were well decided, they differ so materially and radically in their nature and purpose from the case under consideration, that they form no basis for its decision. This association does not meddle with prices and itself does no business. In refusing to recognize any yard trader who is not a member of the exchange, we see no purpose of thereby affecting or in any manner restraining interstate commerce, which, if affected at all, can only be in a very indirect and remote manner. The rule has no direct tendency to diminish or in any way impede or restrain interstate commerce in the cattle dealt in by defendants. There is no tendency as a result of the rule, directly or indirectly, to restrict the competition among defendants for the class of cattle dealt in by them. Those who are selling the cattle have the market composed of defendants, and also composed of the representative buyers of all the packing houses at Kansas City, and also of the various commission merchants who are constantly buying on orders and of those who are buying on their own account. This makes a large competition wholly outside of the defendants. The owner of

cattle for sale is, therefore, furnished with a market at which the competition of buyers has a broad effect. All yard traders have the opportunity of becoming members of the exchange, and to thus obtain all the advantages thereof.

The design of the defendants evidently is to bring all the yard traders into the association as members, so that they may become subject to its jurisdiction and be compelled by its rules and regulations to transact business in the honest and straightforward manner provided for by them. If while enforcing the rules those members who use improper methods or who fail to conduct their business transactions fairly and honestly are disciplined and expelled, and thereby the number of members is reduced, and to that extent the number of competitors limited, yet all this is done, not with the intent or purpose of affecting in the slightest degree interstate trade or commerce, and such trade or commerce can be affected thereby only most remotely and indirectly, and if, for the purpose of compelling this membership, the association refuse business relations with those commission merchants who insist upon buying from or selling to yard traders who are not members of the association, we see nothing that can be said to affect the trade or commerce in question other than in the most roundabout and indirect manner. The agreement relates to the action of the associates themselves, and it places in effect no tax upon any instrument or subject of commerce; it exacts no license from parties engaged in the commercial pursuits, and prescribes no condition in accordance with which commerce in particular articles or between particular places is required to be conducted. *Sherlock* v. *Alling*, 93 U. S. 99; *Smith* v. *Alabama*, 124 U. S. 465, 473; *Pittsburg and Southern Coal Company* v. *Louisiana*, 156 U. S. 590, 598.

If for the purpose of enlarging the membership of the exchange, and of thus procuring the transaction of their business upon a proper and fair basis by all who are engaged therein, the defendants refuse to do business with those commission men who sell to or purchase from yard traders who are not members of the exchange, the possible effect of such a course

of conduct upon interstate commerce is quite remote, not intended and too small to be taken into account.

The agreement lacks, too, every ingredient of a monopoly. Every one can become a member of the association, and the natural desire of each member to do as much business as he could would not be in the least diminished by reason of membership, while the business done would still be the individual and private business of each member, and each would be in direct and immediate competition with each and all of the other members. If all engaged in the business were to become members of the association, yet, as the association itself does no business, it can and does monopolize none. The amount and value of interstate trade is not at all directly affected by such membership; the competition among the members and with others who are seeking purchasers would be as large as it would otherwise have been, and the only result of the agreement would be that no yard traders would remain who were not members of the association. It has no tendency, so far as can be gathered from its object or from the language of its rules and regulations, to limit the extent of the demand for cattle or to limit the number of cattle marketed or to limit or reduce their price or to place any impediment or obstacle in the course of the commercial stream which flows into the Kansas City cattle market. While in case all the yard traders are not induced to become members of the association, and those who are such members refuse to recognize the others in business, we can see no such direct, necessary or natural connection between that fact and the restraint of interstate commerce as to render the agreement not to recognize them void for that reason. A claim that such refusal may thereby lessen the number of active traders on the market, and thus possibly reduce the demand for and the prices of the cattle there set up for sale, and so affect interstate trade, is entirely too remote and fanciful to be accepted as valid.

This case is unlike that of *Hopkins* v. *Oxley Stave Company*, 83 Fed. Rep. 912, to which our attention has been called. The case cited was decided without reference to the act of Con-

gress upon which alone the case at bar is prosecuted, and the agreement was held void at common law as a conspiracy to wrongfully deprive the plaintiff of its right to manage its business according to the dictates of its own judgment. It was also said that the fact could not be overlooked that another object of the conspiracy was to deprive the public at large of the benefits to be derived from a labor-saving machine which seemed to the court to be one of great utility. No question as to interstate commerce arose and none was decided.

From what has already been said regarding rule 10, it would seem to follow that the other rules (11, 12 and 13) are of equal validity as rule 10, and for the same reasons. The rules are evidently of a character to enforce the purpose and object of the exchange as set forth in the preamble, and we think that for such purpose they are reasonable and fair. They can possibly affect interstate trade or commerce in but a remote way, and are not void as violations of the act of Congress.

We are of opinion therefore that the order in this case should be reversed and the case remanded to the Circuit Court of the United States for the Western Division of the Western District of Missouri with directions to dismiss the complainants' bill with costs.

Mr. Justice Harlan dissented.

Mr. Justice McKenna took no part in the decision of this case.